

**NOMINATION OF DAVID S. KRIS TO BE ASSISTANT
ATTORNEY GENERAL FOR NATIONAL SECURITY**

HEARING
BEFORE THE
SELECT COMMITTEE ON INTELLIGENCE
OF THE
UNITED STATES SENATE
ONE HUNDRED ELEVENTH CONGRESS
FIRST SESSION

MARCH 10, 2009

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**NOMINATION OF DAVID S. KRIS TO BE
ASSISTANT ATTORNEY GENERAL
FOR NATIONAL SECURITY**

TUESDAY, MARCH 10, 2009

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Committee met, pursuant to notice, at 2:32 p.m., in Room SD-106, Dirksen Senate Office Building, the Honorable Dianne Feinstein (Chairman of the Committee) presiding.

Committee Members Present: Senators Feinstein, Rockefeller, Wyden, Feingold, Bond, and Chambliss.

**OPENING STATEMENT OF HON. DIANNE FEINSTEIN,
CHAIRMAN, A U.S. SENATOR FROM CALIFORNIA**

Chairman FEINSTEIN. The hearing will come to order. I apologize for this large hearing room. It is not the most intimate of surroundings but it is public and that is our requirement.

The Committee meets today to consider the nomination of David Kris to be Assistant Attorney General for National Security.

Mr. Kris, at this time, are there any members of your family that you would like to introduce?

Mr. KRIS. Yes, Senator, there is my wife just behind me here, Jody Kris.

Chairman FEINSTEIN. Good. Welcome, Mrs. Kris.

I had the opportunity to preside at a hearing of the Judiciary Committee on Mr. Kris' nomination on February 25 of this year, and the Judiciary Committee reported out the nomination unanimously on March 5. Because of a provision in the PATRIOT Act Reauthorization Act of 2006 that created this Assistant Attorney position, the nomination is now before the Committee. Now, given that the Judiciary Committee conducted its reviews and posted information on its website and that six of this Committee's members serve on Judiciary, I hope to be able to move this nomination quickly, and it would be my intention to try to mark it up at Thursday afternoon's meeting.

The Assistant Attorney General for National Security is the bridge between our nation's intelligence community and the Department of Justice. The Assistant Attorney General represents the government before the FISA court and is also the government's chief counterterrorism and counterespionage prosecutor. The work of that official is, therefore, of great interest to our Committee. Among the important acts this year for Mr. Kris, if confirmed, will

be to prepare the new certifications and supporting materials that the Executive Branch will submit to the FISA court under last year's FISA Court Act.

As such, he would be the official at the Department of Justice most directly involved in questions of setting minimization, which is a very important part of that bill, and targeting procedures, also an important part, reviewing the Attorney General's guidelines under the Act, and making sure that intelligence collection is carried out faithfully under the law.

The Assistant Attorney General is also highly involved in decisions concerning the information that the FBI is allowed to share with Congress, a matter I discussed recently with Director Muller.

Another issue I raised with Mr. Kris at the Judiciary Committee is the authorities for detaining individuals currently held at Guantanamo Bay, and in particular what is allowed under the law of war and the Geneva Conventions.

This Committee is very interested in prosecuting those involved in terrorism. But we are also concerned by the threat that detainees may pose if they are returned to nations that are unwilling or unable to keep them from resuming extremism. And although they may not be convictable of an instant attack, they can still be a future threat to our nation's security. And I believe that we consider that we have the proper procedures in place to be able to examine that.

So I might say, Mr. Kris, we will look forward to working closely with you as we encounter these problems.

I'd like now to turn to the distinguished Vice Chairman for his comments.

**OPENING STATEMENT OF CHRISTOPHER S. BOND, VICE
CHAIRMAN, A U.S. SENATOR FROM MISSOURI**

Vice Chairman BOND. Thank you, Madam Chair.

Although I didn't have the privilege of sitting in on the hearing of the Judiciary Committee, I've had a very good discussion with Mr. Kris and I welcome you here today on your nomination to be the next Assistant Attorney General for National Security.

As I believe the Chair and I agree, it's extremely important that we establish early on a close working relationship, because your position is one which is critical in our relations with the Department of Justice and your advice and counsel and sometimes our advice, wanted or unwanted, is important to be able to exchange.

I extend a very special welcome to your wife, Jody, and I commend you, Mrs. Kris, for your dedicated support. Most spouses only have to sit through one confirmation hearing for a given position, but two hearings, while necessary in this case, may border on, if not cruel and unusual punishment, at least excessive testing of one's sense of humor.

You will be the third Assistant Attorney General, Mr. Kris. Ken Wainstein, Pat Rowan, and the dedicated men and women of the National Security Division really deserve our gratitude and praise for their tireless efforts to stand up this new division within the DOJ while continuing to provide crucial legal services to the intelligence community and in many instances to Congress.

For example, NSD has already played an essential role in making important revisions to national security legislation and policy during the passage of the Protect America Act and its successor, the FISA Amendments Act, in which I was somewhat involved. Attorneys from that National Security Division provided key technical assistance to me and advice to the Committee. And the attorneys also participated in revision of Executive Order 12333 and the Attorney General's guidelines for domestic FBI operations.

Just as important, NSD has essentially eliminated the pre-existing backlog of FISA applications so that the FISA process is now running smoothly.

Now in your hearing with the Judiciary Committee, you laid out three procedural and three substantive areas on which you intend to focus on the short run, the procedural areas—strengthening internal relationships within components of the NSD, the external relationships within the IC, including the FBI. These are necessary and important. And the three substantive areas you identified also are of particular concern to the Committee—Guantanamo Bay, the FISA Amendments Act and the FBI Domestic Operations Guidelines. I suggest there may be a fourth area requiring your immediate attention—the FISA provisions that are due to sunset this year as part of the USA PATRIOT Act.

Now in our meeting we discussed these issues and I was very much impressed with your knowledge of the subject matter and by the caliber of the individuals who are supporting your nomination. You have some good friends and have some people on which you really have some goods. I believe that you're particularly well qualified for this position and therefore I welcome your nomination and look forward to supporting it.

I agree with the Chair that, barring any reason that we don't know about, it's important for the Committee and the Senate to move quickly so you can get to work. And another advantage to moving quickly is that the Attorney General will be able to designate you as one of the officials who can certify FISA applications. Experience has shown that this added flexibility is essential.

Mr. Kris, I congratulate you on your nomination, and look forward to your testimony and to working with you to ensure that the National Security Division continues to provide outstanding legal support to the Department of Justice, the intelligence community and Congress.

Thank you, Madam Chair.

Chairman FEINSTEIN. Thank you. Thank you very much, Mr. Vice Chairman. I appreciate your comments.

Before beginning the first round of questions, if you have an opening statement, would you like to give it at this time?

**STATEMENT OF DAVID S. KRIS, ASSISTANT ATTORNEY
GENERAL FOR NATIONAL SECURITY-DESIGNATE**

Mr. KRIS. Yes, thank you.

Madam Chairman, Vice Chairman Bond and Senator Rockefeller, it's an honor to appear before you.

In my opening statement to the Judiciary Committee a few weeks ago, I outlined these three sets of issues, procedural and substantive, and I agree with you Senator Bond, the FISA

sunsetting provisions is probably a fourth area. And I won't elaborate on those here.

I did also say before the Judiciary Committee that I wanted to respond appropriately and quickly to Congressional oversight and maintain strong cooperative relationships with the Judiciary Committee and other committees. And I do want to say the same thing, with some emphasis and elaboration, before this Committee.

I haven't studied all of the history and law of intelligence oversight, but I think I do appreciate its fundamental importance to our democracy, and especially the critically important role of this Committee and its counterpart in the House in helping to resolve the tensions that sometimes inevitably will arise between, on the one hand, the need to protect classified sources and methods and, on the other hand, the fact that we live in a democracy that rests fundamentally on the knowledge and consent of the governed. And I think these committees—Americans depend on this Committee and the House Intelligence Committee to provide the kind of oversight that the public itself cannot provide.

And I'm aware of the fact that the Committee cannot fulfill that function unless we in the Executive Branch in turn fulfill our requirement to keep it fully and currently informed. As CIA Director Panetta said, this is not optional; this is the law and it is our solemn obligation to meet it.

And so I want to join Director Panetta and Admiral Blair, in expressing my desire to build a close working relationship with the Committee. I think this will be good for democracy, and I think it will be good for the National Security Division.

So thank you very much.

[The prepared statement of David S. Kris follows:]

PREPARED STATEMENT OF DAVID S. KRIS

Madame Chairman, Vice Chairman Bond, and distinguished Members of the Committee, it is an honor to appear before you. I am grateful to President Obama for nominating me, to Attorney General Holder for supporting me, and to the Committee for considering me. I also appreciate the Members who met with me prior to this afternoon.

In my opening statement before the Judiciary Committee two weeks ago, I identified three procedural issues, and three substantive issues, on which I hope to focus if confirmed, subject to the important caveat that I remain an outsider, without detailed knowledge of certain classified and operational matters. At the risk of repetition for the Members who serve on both Committees, I thought I would mention those issues again, and then devote the balance of my time to discussing what I see as the special and vital oversight role of this Committee.

The three procedural issues I identified are (1) continuing to strengthen internal connections among NSD's various components; (2) focusing on NSD's relationships with the NSC and the Intelligence Community; and (3) continuing the positive evolution of NSD's working relationship with the FBI. My answers to some of your questions for the record address these issues in more detail.

The three substantive issues I identified are (1) Guantanamo Bay; (2) the FISA Amendments Act; and (3) the new FBI Domestic Operations Guidelines. Again, my answers to questions for the record discuss these matters in more detail, and I am happy to discuss them here if there are additional questions.

When I went before the Judiciary Committee, I said that I wanted to respond appropriately and quickly to Congressional oversight, and maintain strong, cooperative relationships with it and with other Committees. I want to say the same thing, with emphasis and elaboration, before this Committee.

While I have not studied all of the history and law of intelligence oversight, I do understand its fundamental importance to our democracy. And I especially appreciate the critical role of this Committee (and its counterpart in the House of Representatives) in helping to resolve the tensions that sometimes arise from the need

to protect classified sources and methods in a system of government that rests fundamentally on the knowledge and consent of the governed.

Americans count on the Committee to provide oversight that the public cannot provide. The Committee, in turn, cannot fulfill that function unless we fulfill our requirement to keep it “fully and currently” informed. As Director Panetta said, this is not optional; it is the law; it is our solemn obligation. So I want to join Director Panetta, and Admiral Blair, in expressing my desire to rebuild a close working relationship with the Committee. I think this will be good for democracy, and also good for NSD—there is a lot of expertise in this hearing room. We maynot always agree on everything, and I know that you will question, challenge, and hold us accountable when appropriate, but I am quite sure that we are at our strongest, and our best, when we work together, and if confirmed I look forward to doing that.

Again, I want to thank the Committee for holding this hearing. I would be pleased to answer your questions. Thank you.

Chairman FEINSTEIN. Thank you very much, Mr. Kris.

Before beginning the first round of questions, I have some procedural questions to ask you. A yes-or-no answer will suffice.

If confirmed, Mr. Kris, do you agree to appear before the Committee here or in other venues, if invited?

Mr. KRIS. Yes.

Chairman FEINSTEIN. Do you agree to send officials from the National Security Division to appear before the Committee and designated staff when invited?

Mr. KRIS. Yes.

Chairman FEINSTEIN. Do you agree to provide documents or any other material requested by the Committee in order for it to carry out its oversight and legislative responsibilities?

Mr. KRIS. Yes.

Chairman FEINSTEIN. Will you ensure that the National Security Division provides such material to the Committee when requested?

Mr. KRIS. Yes.

Chairman FEINSTEIN. And do you agree that you will inform and fully brief, to the fullest extent possible, all members of the Committee of intelligence activities, rather than only the Chairman and Vice Chairman?

Mr. KRIS. Yes, in keeping with law, yes.

Chairman FEINSTEIN. Thank you very much.

Let me begin my questions. The FISA Amendments Act was signed into law in July 2008. It provides for annual authorizations by the Attorney General and the DNI for the collection of foreign intelligence targeted against persons reasonably believed to be located outside the United States. Starting this summer, the next Assistant Attorney General for National Security will have responsibility for presenting to the FISA court the certifications and supporting material for the annual renewal of collection authority.

Having looked at the legislation, what questions do you intend to ask about the targeting and minimization procedures? Have you considered what the Attorney General guidelines, also required in the FISA legislation, should be?

Mr. KRIS. Well, Senator, I appreciate very much that question, and as we’ve discussed, the FISA Amendments Act is at the top of my list of things to do if I am fortunate enough to be confirmed. I’m a little bit at a disadvantage in anticipating all of the things that I will want to do if I am confirmed in this area, because in my current posture I am not aware of the classified information about the implementation of the FISA Amendments Act, and I do

think that this is a statute that is both very complex, very broad and very important to understand the ground truth of the implementation.

Chairman FEINSTEIN. My question was limited to the minimization and targeting.

Mr. KRIS. Yes. With respect to the targeting procedures, I would really want to understand technologically what kinds of safeguards there are to ensure that there is a reasonable belief about the location of the target. There are provisions in the Act, as you know, that forbid the intentional acquisition of known domestic communications, and I would want to understand very much how those safeguards are being implemented.

I have written publicly about the difficulty in identifying the location of communicating parties in the world of modern mobile communications and web-based communications, and I would be very interested to know how they are overcoming those kinds of difficulties to be able to form a reasonable belief about the location of a party.

And, with respect to minimization, I think I would be particularly interested in, first, protection for U.S.-person identifiers, to the extent they are incidentally acquired, and how the minimization procedures differentiate between non-U.S.-person and U.S.-person identifiers and identities, because I think that's also increasingly challenging in the world that we're living in today.

Chairman FEINSTEIN. Well, I would hope to discuss this with you, and the Vice Chairman may want to as well, as soon as you become familiar.

Vice Chairman BOND. I think we'd best discuss this in a classified session.

Chairman FEINSTEIN. Yeah. Well, that's what I essentially said.

By its first anniversary in July, the FISA Amendments Act also requires completion of a comprehensive IG review of the terrorist surveillance program. The report is to be unclassified but may include a classified annex. Many in Congress supported the FISA legislation because there would be this review by the IG of the terrorist surveillance program. That was a way to ensure that there would be a fact-finding effort, given that the immunity provision in the bill ensured that the courts would not be a venue for this effort.

The Assistant AG for National Security could well have an important role in the declassification process for the IG review. What do you expect that role to be in the declassification process?

And secondly, what standards—and this is in general, but I think it's important because there's a lot of discussion among us on this point—what standards would you apply to the declassification process, including what weight, you mentioned this, should be given to the interest in public information about a program, particularly in light of the action of Congress to bring to a conclusion litigation against electronic communications service providers?

Mr. KRIS. Thank you, Senator.

I feel very strongly that, in general, we are well served when information about our intelligence operations can be made public, consistent with the obvious need to protect classified information. And, as the author of a book in this area and a teacher of law school classes, I do feel personally sympathetic to the desire to

produce as much information publicly as can be produced. So, I have a very strong sort of support for that general principle.

In terms of the Inspector General reports and my role in them, I would think—obviously, subject to the Attorney General’s direction—that the National Security Division and the Assistant Attorney General would play a role in reviewing and serving as a “bridge,” I think you said, between the agencies, whose operational equities may be at stake, and the Inspector General, who wishes to publicize as much as possible, and do a little testing on assertions that information is classified, and try to help facilitate and broker a constructive arrangement to settle any differences that might occur.

So, that’s, in the abstract, without having consulted with the people involved there, I think what I would see the role for NSD to be there.

Chairman FEINSTEIN. Thank you very much. My time is up.

The Vice Chairman.

Vice Chairman BOND. Thank you very much, Madam Chair. And I know that Mr. Kris has extensive experience in this area, and I believe you understand the declassification area.

Last week this Committee initiated a bipartisan study of the CIA’s detention and interrogation program—not designed for political theater, for a deconstruction of the legality of the program, which would fall outside of our Committee’s jurisdiction. Rather, the Committee’s focus should and will be on CIA’s action, with our ultimate purpose being to shape detention and interrogation policies moving forward.

But, you will be in a different position than we are, if confirmed, so I’d like to know, do you think the DOJ should conduct criminal investigations of individuals involved in the program, who acted in accordance with procedures approved by the Office of Legal Counsel and authorized by the President of the United States?

Mr. KRIS. Senator, a two-part answer to that question: The first is that, as your question indicates, no one is above the law—

Vice Chairman BOND. Right.

Mr. KRIS [continuing]. And prosecutorial judgments of this kind are always fact-intensive. But what you said was, can you imagine prosecution of people who followed in good faith and reasonably relied on authoritative pronouncements from the Justice Department about what the law is? I think there a second principle begins to apply, that I think, in light of settled doctrines—advice of counsel, due process concerns, not to mention the Military Commissions Act immunity provision that Congress enacted—I think it would be very difficult to imagine a prosecution of someone who really was told by the Justice Department “what you’re doing is legal,” even if the Justice Department later changes its mind.

Vice Chairman BOND. If senior Executive Branch officials authorized the detention and interrogation program, should they be prosecuted?

Mr. KRIS. I think the same answer would probably apply to that question, Senator.

Vice Chairman BOND. What about the lawyers who wrote the OLC opinions?

Mr. KRIS. I am not aware—same answer, but with an additional modifier, which is I think that the lawyers, it's even, perhaps, more difficult to figure out how you would make that fit.

Vice Chairman BOND. We lawyers always take care of our own and make it difficult to proceed against one another.

On the PATRIOT Act, I know you were heavily involved in the passage of the PATRIOT Act. Three provisions of the Act related to FISA are due to sunset this year—the lone wolf, roving wiretap authority, and Section 215 business records court order. Do you believe that each of these provisions should be made permanent? And how much weight do you believe should be given to the frequency with which a particular provision has been used?

Mr. KRIS. This is an area where, being an outsider, it's difficult to know, because one of the things I'd want to know, if I am confirmed, would be: How have these been used? How often? Have they been misused? If so, how often? Are there possible uses that people can think of that actually haven't happened but could happen?

Frequency of use would be one factor, but lack of frequency would not necessarily mean that the provision ought not be renewed or made permanent. I just would want to see what the operational environment is, and the importance of the provision, as well as its frequency of use.

Vice Chairman BOND. Well, that leads me to a follow-up question. If a particular authority has not been used because of unnecessary administrative burdens, would you review that with an eye to cutting out extra red tape and analysts so that the authority would be usable, if it were held up by reason of excessive regulation?

Mr. KRIS. Yes. I would certainly want to look at that.

Vice Chairman BOND. You were involved in the revision of 2003 National Security guidelines that knocked down the walls between criminal and national security. I think you've had an opportunity to review the newly revised AG guidelines for domestic FBI operations—which, in my opinion, hit home the point that the FBI should be able to use all of the tools in its toolbox.

What are your opinions of these guidelines? Can you see any reason why the FBI shouldn't use the same tools to track down terrorists as it uses to catch white-collar criminals or drug dealers?

Mr. KRIS. As I said in my opening statement and in my questions for the record, I think there are several elements of the new guidelines that I support. One is the unification, the transparency—they're more public than they used to be. I think they reflect the FBI's evolution into a security service, which I think is a good thing; and I think they reflect an increasing evolution of the operational partnership between DOJ and the FBI, all of which is a good thing.

I have some questions about how they apply in practice, and that's an area that I'd want to explore if I am fortunate enough to be confirmed, but I do think the elements that I mentioned are positive about these guidelines.

Vice Chairman BOND. Thank you, Mr. Kris.

Thank you, Madam Chair.

Chairman FEINSTEIN. Thank you very much, Mr. Vice Chairman.

Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Madam Chair.

Mr. Kris, if you're an American citizen reading a newspaper, and you read that the leadership of Intelligence Committee has been fully briefed on a subject—I'm in FISA now, okay?—

Mr. KRIS. Okay.

Senator ROCKEFELLER [continuing]. Fully briefed, what do you, as an American citizen, tend to feel?

Mr. KRIS. I think I feel good, if that's true.

Senator ROCKEFELLER. Well, that is my second question. Do you know anything about the briefing process?

Mr. KRIS. Yes, a little bit, yes.

Senator ROCKEFELLER. Do you feel the word "fully briefed" is applicable?

Mr. KRIS. I'm sorry, the standard is "fully and currently informed," and I think that standard applies without—

Senator ROCKEFELLER. And I was going to ask that to you about keeping the Intelligence Committee, in general, up to date.

Mr. KRIS. Yes, sir.

Senator ROCKEFELLER. I'll just tell you that the whole idea that we were fully briefed or fully advised is a farce. And it was from the beginning—the very first to the very end. Now, that, I just wanted to ask.

When you use the words "fully and currently informed" as keeping the Intelligence Committee briefed, understanding that intelligence does not belong to the Intelligence Committee but it belongs to the Executive Branch and, therefore, the Executive Branch only gives us what they want to give us, a tactic which was used quite deftly in the last administration—and I hope won't be in this—what is your understanding of "fully and currently?"

Mr. KRIS. Well, in my questions for the record, Senator, I gave some discussion of this and I actually quoted from the legislative history of FISA, where there's a discussion of the standard.

I think it anticipates and it involves a very robust and cooperative relationship where the Committee gets access to a tremendous amount of information in a timely way. I mean, the details of it may depend in the particular circumstance. There's legislative history, for example, that the Committee may not always want to get the names of human sources or individuals involved, certain tactical information about troop movements. But, short of that, I think the standard, as I understand it, calls for a very robust exchange of information between the Executive branch and the Committees. That's why the Committees were established.

Senator ROCKEFELLER. Do you know the term "gang of eight"?

Mr. KRIS. I do.

Senator ROCKEFELLER. Which could be gang of four, gang of eight, gang of whatever.

Do you have any idea how often we met since—

Mr. KRIS. Not really.

Senator ROCKEFELLER [continuing]. Senator Bond and I were both Chairman and Vice Chairman at different times, and we participated in these.

Mr. KRIS. I don't, honestly. I'm sorry.

Senator ROCKEFELLER. Very infrequently—very infrequently. And usually to inform us of something which was not actually germane to the overall intelligence purpose, except to pump us up a little bit.

So is it your understanding that gang of eight notifications are meant to be rare and temporary or that the gang of eight is a little bit obsolete in that it gives you a way of going over the Intelligence Committee and just saying, well, you briefed two in the Senate and two in the House and so that's that?

Mr. KRIS. No. The former, Senator, is my understanding. Yes.

Senator ROCKEFELLER. That's fine. Thank you.

Chairman FEINSTEIN. Thank you very much, Senator.

Senator WYDEN.

Senator WYDEN. Thank you, Madam Chair.

And Mr. Kris, welcome.

Let me ask you first about national security letters. The Department of Justice's Inspector General uncovered in the past fairly significant levels of misuse of this authority. And my understanding is that some steps have been taken to address this concern. But I think what I'd like to know is, are you convinced at this point, based on what you know, that everything necessary has been done to prevent misuse of national security letter authority in the future?

Mr. KRIS. That's an excellent question and it's a very important area. The short answer is I am not—from where I sit now—thoroughly convinced that everything that should be done or that could be done has been done. I just don't know enough.

I was also very troubled by the disclosures in the March 2007 IG report. I was somewhat heartened by the corrective measures identified in the March 2008 report, but I think that report contemplated that the work would be ongoing. This is something that I would want to look into if I was confirmed, but I'm not sitting here now totally confident that everything has been done.

Senator WYDEN. Can you get back to the Committee, through the Chair and our Vice Chairman, within, say, 30 days, if confirmed, with your opinion as to whether additional steps are necessary to prevent misuse of national security letter authority?

Mr. KRIS. I will certainly try to do that, yes.

Senator WYDEN. Very good.

The second issue I want to ask you about involves a process for reviewing, redacting and publishing key opinions from the FISA court. These are, of course, authoritative rulings with enormous impact. And I very much would like to see a process for regular review of these opinions, taking steps to put in place redactions and whatever is necessary to protect operations and methods, but to make the opinions public.

I think the American people have a right to this, as long as steps are taken to protect our national security and our nation's wellbeing. Would you be willing to work with this Committee to set in place a process of this nature?

Mr. KRIS. Absolutely, yes. I will work with you on that.

Senator WYDEN. All right. That's very helpful.

And I think the last question involves what essentially are these Linder letters—these letters that reflect the FBI position with re-

spect to briefing the Committee on terrorism and counterintelligence investigations.

Now, my sense is that the FBI feels it shouldn't brief, the community shouldn't brief the Congress, because it in some way would jeopardize an ongoing criminal investigation or prosecution. I know of no member of this Committee—neither a Democrat or a Republican—who would ever want to get in the way of one of those ongoing investigations and prosecutions. But I've got to think there is a way to structure briefings from the FBI and the DOJ for this Committee that can go forward without compromising these investigations and prosecutions.

If you're confirmed, would you commit to following up with the Committee and the FBI to address this issue?

Mr. KRIS. Yes, I will be happy to do that.

Senator WYDEN. All right. I look forward to working with you. I believe you're going to be confirmed. You're certainly going to have my support. And I appreciated our discussion, and my sense is that you're going to work in a very bipartisan way, which is something I feel very strongly about and I'll look forward to pursuing these issues with you.

Thank you, Madam Chair.

Chairman FEINSTEIN. Thank you very much.

Senator ROCKEFELLER. And my support as well.

Chairman FEINSTEIN. Thank you very much, Senator Wyden.

Senator Feingold, you're next, and then Senator Chambliss.

Senator FEINGOLD. I thank the Chair.

Mr. Kris, let me congratulate you again.

On September 25, 2001, John Yoo of the OLC sent you a memo purporting to analyze the constitutionality of proposed PATRIOT Act provisions. However, Yoo's memo, which the Department of Justice recently made public, also answered a question you hadn't actually asked. It argued that "as national security concerns in the wake of the September 11th attacks have dramatically increased, the constitutional powers of the Executive branch have expanded, while judicial competence has correspondingly receded."

As one of the Justice Department lawyers looking at that time right after 9/11 to work through the FISA court, what do you think of the assertion that judicial competence had receded?

Mr. KRIS. I think the Supreme Court has made very clear that September 11th did not trigger a radical rebalancing of our constitutional system of shared and separated powers. And I'm thinking of the decisions in Hamdi, Hamdan and Gumadeen. I think all reflect the view that judicial competence has not receded.

Senator FEINGOLD. Thank you.

Mr. Kris, in response to written questions posed to you before this hearing, you indicated that there was nothing in the FISA statute to indicate that the President could disregard it. Is that accurate?

Mr. KRIS. Yes, it is. There is nothing in FISA to suggest the President may disregard the statute. On the contrary.

Senator FEINGOLD. Thank you. In other words, any violation of FISA would be clearly in the third category of the Jackson test, which you just alluded to and would constitute what you have called a "grave and extraordinary" act, one that has never been

upheld by the Supreme Court. Is that a correct summary of your views?

Mr. KRIS. Yes. I am not aware of any case in which the Supreme Court has upheld the exercise of a commander-in-chief power in category three.

Senator FEINGOLD. Mr. Kris, you testified in the Judiciary Committee you could not evaluate the constitutionality of the warrantless wiretapping program without the facts. And I appreciate that as a careful lawyer you would not want to give advice to your client without access to all the relevant information. But for purposes of this hearing, let us work with the facts as stipulated by the Bush Administration.

The government wiretapped communications into and out of the United States without the warrant required by FISA. It did so under a lesser standard than that which is required by the court. "The trigger is quicker and a bit softer than it is for a FISA warrant" was how General Hayden put it. And they did all this for over five years.

Can you even imagine some fact known only to those read into the program that might render these acknowledged activities legitimate assertions of Article 2 authority?

Mr. KRIS. Senator, you're right. I do try to be a careful lawyer, in part because of the grave and extraordinary nature of the question that is being posed. But I will say, based on your description sitting here right now, I cannot think of any facts that would make that TSP constitutional in 2005 when it was revealed.

And I think the FISA Amendments Act shows that Congress, when informed of a problem, is capable of responding, which moves the President from category 3, as you know, into category 1, where he's strongest and where I think, at least, the government as a whole is at its best.

Senator FEINGOLD. Thank you for your clear and encouraging answers and I wish you well.

Chairman FEINSTEIN. Thank you very much, Senator Feingold.

Senator Chambliss.

Senator CHAMBLISS. Thank you, Madam Chairman.

Mr. Kris, I don't want to duplicate what has been before, but you and I had a conversation about the PATRIOT Act and the provisions that are expiring. And I wish you'd just go back through that for the record and talk about these expiring provisions, what your position is on them, and your experience in helping actually draft those provisions.

Mr. KRIS. Yes, sir. Thank you, Senator.

I did speak just briefly to this before. I think it's important to understand—and one of the things I would want to do if I'm confirmed is to understand the ground truth—how these provisions have been used or how they could be used and whether they've been misused or could have been misused. I'd want to understand the operational reality before making a judgment one way or the other about whether they ought to be changed or continued. And those are the kinds of things I would want to look into if I were fortunate enough to be confirmed.

Senator CHAMBLISS. One thing we talked about was the roving wiretap. And I remember your comment was just as you stated

there. You wanted to see how it had functioned from an operational standpoint. But it may be one of those things that we might not need with the emergency procedures that are set forth in the revised Act.

I would only comment to you that—and I know you will look at it closely—but those emergency procedures would not give the intelligence community the same ability to follow that individual phone-to-phone without going back to the FISA Court to get a new emergency warrant. So the roving wiretap still is one of the more valuable types of tools that I think—I hope at least—that you will find is something that is critically important to our folks.

Mr. KRIS. Yes sir.

Senator CHAMBLISS. With respect to Gitmo, again I don't want to duplicate what's been said but I know you understand the seriousness of the remaining prisoners that are there. You were very direct in our conversation that you want to make sure that the right thing is done and that the President has identified three different categories of prisoners that these folks at Gitmo would fall into.

I would simply say that I am very much concerned about the potential for any of these remaining 240, or whatever the number may wind up being at the end of the day when there is final closure to Gitmo, coming to the United States, being on U.S. soil, having the benefit of not just the same criminal assets that any common criminal in the United States might have, but maybe even greater assets than a common criminal would have. And the potential for those folks being released on U.S. soil into our society scares me to no end.

And I would simply say that—again, you and I talked about this but just for the record—any comments you have on the release of prisoners from Gitmo, where you think they may go, what may happen to them if they do come to U.S. soil.

Mr. KRIS. Yes, Senator. This is obviously a very important question and, as you mentioned, the Executive Order that the President issued calls for an ongoing thoughtful, careful review. And with respect to releasing any detainees at large into the United States, I think I am substantially bolstered and I think you should be and the Committee should be as well by the D.C. Circuit's decision in the *Kayemba* case—which I think really stands for the proposition and holds that unless there's a statute that compels the release, the courts don't have authority to order it.

So I think to have someone released at large in the United States, if we believe they are genuinely dangerous, I think is not a very plausible outcome at all.

Senator CHAMBLISS. Thank you, Madam Chairman.

Chairman FEINSTEIN. You're welcome, Senator.

I had one other question if I might, Mr. Kris. On March 2, 2009, as it was referred to earlier, the DOJ released a number of OLC opinions from 2001 to 2002, and that was during the time you were Associate AG.

One of those opinions was addressed to you and that was dated September 25th, 2001, and entitled "Constitutionality of Amending Foreign Intelligence Surveillance Act to Change the Purpose Standard for Searches." And this became the basis of a 15-page letter to

the Senate Intelligence and Judiciary Committees on October 1 of 2001.

On January 15, 2009, in a memorandum to the files also released on March 2 of this year, Steven Bradbury, who was then the Principal Deputy Assistant Attorney General for OLC, wrote that a portion of your September 25th opinion did not reflect the current views of OLC. The part that Mr. Bradbury addressed had asserted the view that judicial precedence—approving the use of deadly force in self-defense or to protect others—justified the conclusion that warrantless searches conducted to defend the nation from attack would be consistent with the Fourth Amendment.

Did you review the entire September 25th opinion when you received it?

Mr. KRIS. I'm sure that I did. Yes.

Chairman FEINSTEIN. Do you recall what your assessment was of the deadly force argument?

Mr. KRIS. Not really. I know I had some reservations about the opinion, but I was very much focused on working with the Congress to get the statutory change that we were seeking there with respect to the Purpose Amendment and really wasn't focused on at that time—especially in the immediate aftermath of September 11th—on sort of these other kinds of questions which, in hindsight, have taken on greater significance.

Chairman FEINSTEIN. Did you discuss with anyone at DOJ any reaction that you had at the time?

Mr. KRIS. I want to be careful, both because it's a while back and because I don't want to get into areas that might be inappropriate for a public hearing.

Chairman FEINSTEIN. I understand that. But you don't recall? You don't remember?

Mr. KRIS. Yes. I think I would like to take it up, if possible, in a different setting.

Chairman FEINSTEIN. Okay. What now is your assessment?

Mr. KRIS. I think the analogy to the law of self-defense—I agree at least with Mr. Bradbury's assessment of Mr. Yoo's analysis there.

Chairman FEINSTEIN. In what respect?

Mr. KRIS. Mr. Bradbury's recent memo rejects that analogy, and I certainly agree with that.

Chairman FEINSTEIN. And you do as well?

Mr. KRIS. Yes.

Chairman FEINSTEIN. Did you become aware of or read at that time any other opinions of OLC on matters relating to surveillance at any time after September 11th until you left the department in 2003?

Mr. KRIS. I can think of one other opinion that I believe has been made public that Mr. Yoo wrote for me which had to do with the authority of the Deputy Attorney General to issue approvals under Section 2.5 of 12333 with respect to U.S. persons abroad. I mean, there may have been other opinions that I've read. I have been authorized by the Department to say publicly—and I have said publicly—that I was not read into the terrorist surveillance program, the TSP, so I did not have access to and still haven't seen those opinions, if any.

Chairman FEINSTEIN. All right. Well, thank you very much and, again, it is my intent to mark up this appointment on Thursday. And if I may, Mr. Vice Chairman, I'm going to turn the gavel over to you.

Vice Chairman BOND. It's exciting.

Chairman FEINSTEIN. It is exciting isn't it? You're welcome.

Vice Chairman BOND [presiding]. Thank you very much, Madam Chairman. I think we're a very few minutes away from a vote, if they maintain the schedule.

I would say, Mr. Kris, and for the record I had been advised informally by former members of the Big Eight that while the full Committee was not advised, the Gang of Eight was fully briefed at the inception and during the conduct at the Terrorist Surveillance Program prior to the time that those of us on the full Committee were advised.

I also have a suspicion that you probably had a pretty good idea what was going on, as some of us who visited with our other particular locations where it was going on. But putting that aside, on the national security letters, I've been disappointed by some characterization of errors by the FBI contained in Inspector General reports as "abuses" of NSLs. I think we can all agree that exigent letters, which are not NSLs, weren't used properly but we need to be careful about what we characterize as abuses of the NSLs.

A good solution to eliminating the administrative errors raised in the IG reports is one you presented to a House subcommittee last year—create a single statute providing for national security subpoenas to replace all of the current NSL provisions.

If you are confirmed in this position, would you take a serious look at the merits of having a single NSL statute and report back to the Committee?

Mr. KRIS. Yes, I would be happy to do that.

Vice Chairman BOND. I figured that was an easy one.

Turning to the media shield, do you believe that those who leaked classified information, as well as journalists who release it, should be prosecuted to the fullest extent of the law?

Mr. KRIS. Yes.

Vice Chairman BOND. There was a recent instance where there was a published acknowledgment by someone who had access to classified information and that they actually did release classified information. If there is a public affirmation of a leak, in general, is this the kind of thing that should initiate action with appropriate resolution?

Mr. KRIS. Yes, if I understand you correctly, yes.

Vice Chairman BOND. During the last Congress we heard pretty strong objections from veteran DOJ prosecutors about the negative impact the proposed Free Flow of Information Act, known as Media Shield, could have on the ability to prosecute those who leak classified information. Have you spoken with veteran DOJ prosecutors and do you have a position on whether this legislation should be supported?

Mr. KRIS. Senator, I haven't spoken to any veteran prosecutors about leak investigations recently, although when I was there before I had some conversations, I'm thinking, with Mr. Fitzgerald

perhaps. I don't have an opinion on the particular piece of legislation to which you refer.

I do know the Attorney General, in his Judiciary testimony, expressed sort of a general support, subject to some important caveats, one of which is the need to consult with professional prosecutors in this area, and the other is the need not to cripple our ability to do these leak investigations.

Vice Chairman BOND. Well, that was going to be my next question.

Mr. KRIS. Oh, sorry.

Vice Chairman BOND. I think those are two caveats that are very important.

Mr. KRIS. Yes.

Vice Chairman BOND. A couple of weeks ago, S.417, the State Secrets Protection Act, was introduced. This troubles me because it seems to water down the well-established state secrets privilege and imposes some pretty steep barriers for the government in trying to protect our national security secrets. I believe in the past the DOJ has said that this would harm our national security.

Do you think we need to codify the state secrets privilege? Or should we preserve the long-standing common law approach?

Mr. KRIS. Senator, that's something that I would like to study if I am confirmed. I am aware of I believe it was a letter from the Attorney General and the DNI in the last Administration outlining some concerns, and I'd want to consider those and the views of the professionals at the Department before I would render an opinion on that question.

Vice Chairman BOND. Thank you, Mr. Kris. I'll now turn to Senator Chambliss for his questions.

Senator CHAMBLISS. I don't have anything further.

Vice Chairman BOND. Well, I do happen to have a few more. And for all of my colleagues who were not here we will ask that any—and I ask the staff present—if they have any further questions of Mr. Kris, please get them in by 5:00 today, so you have a full hour-and-a-half, if there's anything you really need to know. But as of that time our harassment and questioning will end.

Mr. Kris, House version of the stimulus bill contained a version of whistleblower protection that has been opposed by both the Clinton and Bush Administrations, in part because of how the legislation handles issues like security clearances and classified information. Fortunately, the provision was stripped out. Do you see any need for modifying the current laws providing whistleblower protection?

Mr. KRIS. That is also an area that I would want to study and understand better before taking a position.

Vice Chairman BOND. And on to my favorite area; do you believe the President has the inherent authority under Article II of the Constitution to engage in warrantless foreign intelligence surveillance? Or, in your opinion, does FISA trump Article II?

Mr. KRIS. I don't think any statute can trump the Constitution, Senator.

Vice Chairman BOND. Thank you.

What is your view of the FISA Amendment's Act, including carrier liability protections?

Mr. KRIS. Well, as a general matter, it appears to me that the FISA Amendments Act was the product of kind of a bipartisan compromise. I think it is a new and very important statute with a broad grant of authority and I think it underlies an extremely important collection program. I don't know, from where I sit now, exactly how it functions and that is something that I have said I would want to focus on very, very early on if I were to be confirmed.

I think it's an important statute and I really want to understand how it operates and see whether there are improvements that need to be made in that area or whether everything is working well.

With respect to the immunity, I think that's probably an issue that will be handled, in the first instance anyway, by the Civil Division rather than the National Security Division. But, as I understand it, Attorney General Mukasey has certified, Attorney General Holder has said he would not withdraw the certifications absent something truly extraordinary. And as I understand DOJ's public statements, they are not withdrawing and are defending the constitutionality of the immunity provision.

Vice Chairman BOND. And when you have an opportunity to review the operation of it, I would ask for your comments, if you would share with us whether it was a good idea to put Section 2.5 from Executive Order 12333 into FISA.

And I'd also like your advice on whether it should be made permanent. I will not be around to worry about the permanency but perhaps it would save the Department of Justice and quite a few members of the intelligence community some problems if it were made permanent, knowing that it can always be amended.

Mr. KRIS. Yes, sir.

Vice Chairman BOND. When you were at the DOJ during the Clinton and Bush Administrations did you support the use of extraordinary renditions to other countries, including Egypt?

Mr. KRIS. I don't really recall ever working on rendition, so I don't think I had much involvement in it that I can remember anyway, sitting here today.

Vice Chairman BOND. Do you have an opinion on whether extraordinary renditions should remain in the intelligence community toolbox?

Mr. KRIS. I think in talking about rendition, it's helpful to break it down a little bit. I mean, renditions, say, to this country for judicial process is one thing.

Vice Chairman BOND. And rendition back to the country, the home country of the person who is detained. And another form of a rendition, extraordinary rendition refers to returning the person to a third country.

Mr. KRIS. I think there you have to be concerned about adhering to our international obligations and treaties, and you want to get assurances that there won't be improper action taken against the person in the receiving country. And I think this is part of the study that President Obama has ordered in the third of his Executive Orders on January 22.

I don't want to prejudge the results of that study, but you can imagine the kinds of factors that would be considered—to include

what kind of assurances, from whom, and to whom and so forth. And I imagine that will be part of that review.

Vice Chairman BOND. Since the September 11 terrorist attacks, a number of applications for electronic surveillance or physical search approved by the FISA court have increased almost two-and-a-half times; the actual number I don't think we need to get into. We've heard some concerns the increase means that less attention is being given to U.S. persons privacy, that the FISA court is simply a rubber stamp. Based on your experience at DOJ and with the FISA court, do you have any reason to be concerned that FISA is not being utilized appropriately or administered appropriately by the FISA court?

Mr. KRIS. No. On the contrary, my experience when I was there was that the FISA court was not a rubber stamp. I can safely assert that.

Vice Chairman BOND. Finally, it's been DOJ practice to present FISA business record applications to the FISA court. Unlike other FISA applications, Section 215 applications are submitted only by FBI officials, not by the DOJ. Now, I understand there have been delays in getting these applications through the DOJ administrative process, and I believe it would speed things up if the FBI national security law branch attorneys could appear before the FISA court and present the applications themselves, given that the business record applications are submitted only by the FBI without any need for Attorney General certification.

Do you see any reason why FBI lawyers shouldn't be allowed to present applications directly to the FISA court?

Mr. KRIS. That is something I would certainly want to go back and discuss with the FBI lawyers and with the DOJ lawyers before taking a position on it. I do know about the delays that you've talked about. I've read about them in the unclassified IG reports. And I share your concern about that. It's something I would want to address if and when I'm confirmed.

Vice Chairman BOND. Well, Mr. Kris, if you will answer any questions that come in promptly, we hope to vote on your nomination Thursday afternoon and get the confirmation process completed as quickly as possible so we can get to work on our areas of mutual concern.

I thank you very much for being willing to undertake this position. I wish you well and look forward to working with you.

The hearing is adjourned.

Mr. KRIS. Thank you very much, Senator.

[Whereupon, at 3:27 p.m., the Committee adjourned.]

Supplemental Material

SELECT COMMITTEE ON
INTELLIGENCE
UNITED STATES SENATE



**Prehearing Questions
for
David S. Kris
Upon his Selection to be
The Assistant Attorney General for National Security**

*Keeping the Intelligence Committee Fully and Currently Informed***QUESTION 1:**

Section 502 of the National Security Act of 1947 provides that the obligation to keep the congressional intelligence committees fully and currently informed of all intelligence activities applies not only to the Director of National Intelligence but to the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities. 28 C.F.R. § 0.72(a) provides that the Assistant Attorney General for National Security (AAG/NS) shall conduct, handle, or supervise the briefing of Congress, as appropriate, on matters relating to the national security activities of the United States.

- a. What is your understanding of the obligation of the Attorney General and the Director of the Federal Bureau of Investigation to keep the congressional intelligence committees, including all their Members, fully and currently informed?

Answer: The basic obligation imposed by section 502 of the National Security Act of 1947 is to keep the two intelligence committees “fully and currently informed” of all U.S. intelligence activities (except covert actions that are covered in section 503), including “significant anticipated intelligence activities” and “significant intelligence failures.” This section clearly contemplates that the committees will be notified of all “significant” intelligence activities before they are undertaken. These obligations are conditioned by the opening phrase in this section that says “to the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive sources and methods or other exceptionally sensitive matters.” I interpret this phrase to provide the government with a degree of latitude in deciding how (not whether) it will bring extremely sensitive matters to the committees’ attention. In such cases, it may be prudent to begin by notifying the leaders and staff directors of the intelligence committees and attempt to reach an accommodation with them in terms of how and when the committee as a whole should be brought into the matter in question.

- b. To what activities of the Department of Justice, including the Federal Bureau of Investigation, does this obligation ordinarily apply?

Answer: This obligation applies to “intelligence activities,” cf. 50 U.S.C. § 413(f), which would ordinarily include, as appropriate, many of the activities of the FBI’s National Security Branch, as well as related activities of the NSD. The Foreign Intelligence Surveillance Act imposes similar obligations with respect to electronic surveillance, physical searches, and other investigative activity. See, e.g., 50 U.S.C. §§ 1808, 1826, 1846, 1862, 1871, 1881f, 1885c.

- c. Please describe (including a description of your knowledge at the time) and provide your evaluation of implementation of this obligation during your service as Associate Deputy Attorney General (2000-2003).

Answer: Within my areas of responsibility and knowledge, I believe this obligation was satisfied during my service as Associate Deputy Attorney General. In particular, I believe the Department kept the intelligence committees fully informed about the use of the Foreign Intelligence Surveillance Act (FISA) during my service as Associate Deputy Attorney General, and I recall several semi-annual reports on FISA.

- d. With establishment of the National Security Division, what is the responsibility of the Assistant Attorney General for National Security for implementation of this obligation?

Answer: This obligation applies to the Director of National Intelligence and to “heads of all departments” – in this case the Attorney General – but as pointed out in the question, 28 C.F.R. § 0.72(a) provides that the Assistant Attorney General for National Security shall “brief Congress, as appropriate, on matters relating to the national security activities of the United States.” This regulation also provides that the Assistant Attorney General for National Security shall “[p]erform other duties pertaining to ... national security matters as may be assigned by the Attorney General,” and “[a]dvise and assist the Attorney General in carrying out his responsibilities ... related to intelligence, counterintelligence, or national security matters.” See also 28 U.S.C. § 507A(b)(3) (Assistant Attorney General for National Security shall “perform such other duties as the Attorney General may prescribe”).

- e. The Committee utilizes detailed information on the overall national security threat environment to appropriately fulfill its intelligence authorization and oversight functions. However, the FBI at times has declined to fully brief the Committee on potential counterterrorism and counterintelligence threats to the United States, as well as FBI intelligence-related activities to thwart such threats, citing a January 27, 2000 letter from the Department of Justice to Congressman John Linder. Please describe your views on the applicability of the “Linder Letter” to Committee requests for information on intelligence-focused activities of the FBI, as well as your views on what intelligence-related activities of the FBI should not be shared with the Committee, if any.

Answer: I am not familiar with the “Linder Letter.” I appreciate the obligation, discussed above, to keep the Committees fully and currently informed. A summary of that standard appears on page 96 of the House Intelligence Committee’s 1978 report on

the Foreign Intelligence Surveillance Act, which (as noted above) adopts a similar standard:

the word “fully” means that the committee must be given enough information to understand the activities of, but does not mean that the Attorney General must set forth each and every detailed item of information relating to, all electronic surveillances. For example, the committee would not ordinarily wish to know the identities of particular individuals.

Liaison to the Director of National Intelligence

QUESTION 2:

Pursuant to 28 U.S.C. §507A(b)(2), the AAG/NS shall serve as primary liaison to the Director of National Intelligence for the Department of Justice (DOJ).

- a. Have you discussed with the Director of National Intelligence, and with personnel in the Office of the Director of National Intelligence, your respective understandings of that responsibility? If so, describe.

Answer: Yes. As part of the consultation contemplated by 50 U.S.C. § 403-6(c)(2)(C) and Executive Order 12333 § 1.3(d)(2), prior to my formal nomination, the Attorney General, the Director of National Intelligence, and I spoke by telephone briefly about the role of the Assistant Attorney General for National Security as DOJ’s primary liaison to the Director of National Intelligence. I have also spoken to the General Counsel in the Office of the Director of National Intelligence about this topic (I understand that the General Counsel has since left government service). If confirmed, I expect to have further discussions on this topic.

- b. Describe the principal matters that should be addressed in performing this responsibility.

Answer: In general, the Assistant Attorney General for National Security should, in performing his liaison responsibilities, seek to work with the intelligence community to maximize the collection of intelligence on national security threats consistent with the laws and Constitution of the United States and protection of civil liberties. The matters to be addressed in the liaison relationship between the Assistant Attorney General for National Security and the Director of National Intelligence include certain aspects of FISA (see, e.g., 50 U.S.C. §§ 403-1(f)(6) and 1881a), and procedures issued under Executive Order 12333 (see, e.g., Sections 1.3(b)(5), 1.3(b)(20)(C), 2.3).

A report on the National Security Division, published by the Department of Justice in April 2008, explains the liaison relationship as follows:

In the USA PATRIOT Improvement and Reauthorization Act, Congress charged the Assistant Attorney General for National Security with serving as the Department's liaison to the Director of National Intelligence (DNI) and the Intelligence Community, and the NSD has made this responsibility a top priority. The AAG and the DAAGs in the NSD meet and consult with their Office of the Director of National Intelligence (ODNI) counterparts on virtually a daily basis, and the NSD has assigned a detailee to the ODNI to reinforce that collaboration. Since the stand-up of the NSD, the NSD and the ODNI have worked jointly on a number of efforts, including the Foreign Intelligence Surveillance Act (FISA) modernization legislation that is the subject of active Congressional debate and deliberation at this time. NSD attorneys also work on a daily basis with the Central Intelligence Agency (CIA), the National Security Agency (NSA), and other members of the Intelligence Community on a range of legal, policy, and operational issues and on specific investigations that require Justice Department review or participation.

NSD attorneys also coordinate efforts with a variety of other federal agencies that have roles in the national security effort, including:

- The Treasury Department—We assist the Treasury Department with its designation of terrorist organizations and in its ongoing work with the Financial Action Task Force to identify financing methods relating to illegal arms proliferation.
- The State Department—We coordinate with the State Department to provide anti-terrorism training and assistance to numerous nations around the globe.
- The Department of Defense (DOD)—We partner with DOD on the prosecution of high value detainees under the Military Commissions Act (see below), and we regularly provide support to their court-martial proceedings against active duty military members charged with espionage and related offenses.

Representation of Department of Justice on Interdepartmental Boards and Other Entities

QUESTION 3:

28 C.F.R. § 0.72(a)(3) provides that the AAG/NS shall represent the Department of Justice on interdepartmental boards, committees, and other groups dealing with national security, intelligence, or counterintelligence matters. 28 C.F.R. § 0.72(a)(20) provides that the AAG/NS shall represent the Department on the Committee on Foreign Investments in the United States.

- a. In addition to the Committee on Foreign Investments in the United States, what are the interdepartmental boards, committees, and other groups on which the AAG/NS has represented, or should be representing, the Department of Justice?

Answer: As a nominee for the office of Assistant Attorney General for the National Security Division who is not currently employed by the government, my knowledge of NSD's participation is necessarily limited to that set forth in statute, in regulations, and in other public documents. I have attempted to list those groups below. There may be other interdepartmental boards, committees, and groups on which the AAG/NS has represented, or should be representing, the Department of Justice. If confirmed, I expect to address this issue in more detail.

NSD personnel who work on the Committee on Foreign Investments in the United States are also charged with responsibilities relating to Federal Communications Commission (FCC) requests for Executive Branch determinations of the national security implications relating to applications for licenses under Sections 214 and 310 of the Communications Act of 1934. The FCC must decide whether granting each license application is in the "public interest." When the license will be acquired by a foreign entity, the FCC solicits and considers the views of the Executive Branch regarding the effects, if any, the transaction will have on public safety, national security, and law enforcement. To facilitate formation of those views, the Departments of Justice, Defense, and Homeland Security formed an interagency group called "Team Telecom." Team Telecom reviews such applications to determine if a proposed communication provider's foreign ownership, control or influence poses a risk to national security, infrastructure protection, law enforcement interests, or other public safety concerns sufficient to merit the imposition of mitigating measures or opposition to the transaction.

In addition, the National Security Division often represents the Department of Justice in various groups operating under the auspices of the National Security Council (e.g., Interagency Working Groups). The Assistant Attorney General for National Security or his designee typically represents the Department of Justice in the Counterterrorism Security Group (CSG) that evaluates terrorist threats. I expect that the Assistant Attorney General for National Security and/or the National Security Division will play a role in implementing the Executive Orders issued by the President relating to Guantanamo Bay, detainee policy, and/or interrogation policy.

- b. What are the principal responsibilities of each of these boards, committees, or groups, and what is or should be the nature and objectives of the National Security Division's participation on them?

Answer: See answer above.

Implementation of the FISA Amendments Act of 2008

QUESTION 4:

Under section 702 of the Foreign Intelligence Surveillance Act, as added by the FISA Amendments Act of 2008 (FISA Amendments Act), the Attorney General and the DNI may authorize jointly, for a period up to one year from the effective date of the authorization, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information. The FISA Amendments Act was signed into law in July 2008. Thus, the process for one or more new annual authorizations may occur at some time proximate to the first anniversary of the FISA Amendments Act and annually thereafter. The FISA Amendments Act also provide for semiannual or annual assessments and reviews, as described in section 702(l) of FISA. Pursuant to 28 C.F.R. § 0.72(b)(2), the AAG/NS shall supervise the preparation of FISA applications.

- a. Describe your understanding of the matters that the Attorney General and DNI, with the assistance of the AAG/NS, should evaluate in order to determine, on the basis of the first year's experience under the FISA Amendments Act (and annually thereafter), whether there should be revisions in the substance or implementation of (1) targeting procedures, (2) minimization procedures, and (3) guidelines required by the FISA Amendments Act, in order to ensure both their effectiveness and their compliance with any applicable constitutional or statutory requirements.

Answer: As I explained in my opening statement before the Senate Judiciary Committee on February 25, "the FISA Amendments Act ... is a new statute, and I do not yet know exactly how it functions." Accordingly, any views I may hold now are tentative and based primarily on my reading of the statutory language (and other public documents). If I am confirmed, I may revise my view in light of full range of information to which I will then have access.

Subject to the above, I expect that the matters that should be evaluated would include relevant Inspector General reviews, orders or opinions from the FISA Court, and/or some or all of the following, in keeping with 50 U.S.C. §§ 1881a(l) and 1881f:

- the number of disseminated intelligence reports containing a reference to a United States-person identity and the number of United States-person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;
- with respect to acquisitions authorized under 50 U.S.C. § 1881a(a), the number of targets that were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed;
- any procedures developed by the head of a relevant element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under 50 U.S.C. § 1881a(a) acquire the communications of United States persons, and the results of any such assessment;
- any certifications submitted in accordance with 50 U.S.C. § 1881a(g);
- with respect to each determination under 50 U.S.C. § 1881a(c)(2), the reasons for exercising the authority under such section;
- any directives issued under 50 U.S.C. § 1881a(h);
- the results of judicial review of such certifications and targeting and minimization procedures adopted in accordance with subsections (d) and (e) of 50 U.S.C. § 1881a and utilized with respect to an acquisition, including significant legal interpretation of the provisions of 50 U.S.C. § 1881a;
- any actions taken to challenge or enforce a directive under paragraph (4) or (5) of 50 U.S.C. § 1881a(h);
- any compliance reviews conducted by the Attorney General or the Director of National Intelligence of acquisitions authorized under 50 U.S.C. § 1881a(a);
- any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence under 50 U.S.C. § 1881a(h), including incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under 50 U.S.C. § 1881a(h) of this title;

- any incidents of noncompliance by an element of the intelligence community with procedures and guidelines adopted in accordance with subsections (d), (e), and (f) of 50 U.S.C. § 1881a;
- the total number of applications made for orders under 50 U.S.C. §§ 1881b(b) and 1881c(b), including the total number of such orders granted, modified, and denied; and
- the total number of emergency acquisitions authorized by the Attorney General under 50 U.S.C. §§ 1881b(d) and 1881c(d) and the total number of subsequent orders approving or denying such acquisitions.

All of these items should be viewed in the context of a more general review of the operational effectiveness of the Act. Such a review would necessarily involve extensive discussions with the FBI, NSA, and other Intelligence Community components.

- b. Describe how the semiannual or annual assessments and reviews required by the FISA Amendments Act should be integrated, both in substance and timing, into the process by which the Attorney General and DNI consider whether there should be revisions for the next annual authorization or authorizations under the FISA Amendments Act, including in applicable targeting and minimization procedures and guidelines.

Answer: Subject to the limitations noted in my response to Question 4(a), I expect that annual and semi-annual assessments and reviews, as well as day-to-day experience with the Act and any successes, challenges, or problems with its implementation, would inform annual authorizations and any revisions to applicable targeting and minimization reviews. See 50 U.S.C. § 1881a(f)(3)(B). I envision this as a collaborative process that would involve extensive interaction with operational components of the Intelligence Community to ensure the effective implementation of the Act and briefing of the intelligence committees to understand legislators' concerns and to receive their input. As to the precise timing of these discussions, I believe that I will be in a better position to comment once I have had access to the details of how the Act has actually been implemented by the Department.

- c. In addition to the matters described in the FISA Amendments for semiannual or annual assessment or review, are there additional matters that should be evaluated periodically by the Attorney General or the DNI to improve and ensure the lawful and effective administration of the FISA Amendments Act?

Answer: I would anticipate that actual experience with the reviews provided for in the statute will suggest other matters that should be evaluated periodically. If confirmed, I

will keep the Committee informed of any such matters that emerge from my experience overseeing these reviews.

- d. At your Senate Judiciary Committee nomination hearing, in response to a question from Senator Feingold whether you agreed there are serious problems that need to be corrected in the implementation of the FISA Amendments Act, you responded, "I do." To the extent that you can give an unclassified answer, please explain what serious problems you see in the implementation of the FISA Amendments Act and what solutions you would offer.

Answer: The response described in the question took place during the following colloquy:

Q. We had an opportunity earlier today to discuss in a classified setting specific concerns I have about how the FISA Amendment[s] Act has been implemented. Without discussing those specifics in an open hearing, do you agree that there are serious problems that need to be corrected?

A. Senator, ah, I do, I appreciate very much the meeting we had this morning. You raised a number of concerns that I as an outsider had not appreciated, and you certainly got my attention. I have been thinking about it since we met, and if it's even possible, you increased my desire to – if I were to be confirmed – to get to the bottom of the FISA Amendments Act. And I hope, if I am confirmed, that I can take advantage of your learning and that of others on the [Judiciary] Committee and the Intelligence Committee to see how best to make any necessary improvements.

Q. Well, and I hope that you'll work with me to develop modifications to the statute that would potentially address these problems. I realize that you need to get all the detail first.

A. Senator, I will look forward to working with you very much.

My response to Senator Feingold's question about "serious problems" was referring specifically to the classified matters he had raised with me prior to the hearing. The nature of these matters is such that I cannot meaningfully describe them in an unclassified environment. Moreover, as I explained in my opening statement before the Senate Judiciary Committee on February 25, "the FISA Amendments Act ... is a new statute, and I do not yet know exactly how it functions."

In the past, I have raised general questions about the Act's complexity, its continued reliance on location (e.g., of the acquisition target) as a trigger for legal requirements, and its minimization rules (particularly concerning retention and dissemination of information). However, these comments were based only on my reading of the statute and other public documents. If confirmed, I look forward to learning about how the Act functions, making informed judgments about its implementation, and working with Senator Feingold and others on the Committee in this and other areas.

QUESTION 5:

Title III of the FISA Amendments Act of 2008 provides for a comprehensive report by certain inspectors general on the President's Surveillance Program during the period beginning on September 11, 2001 and ending January 17, 2001. The final report is to be submitted, within one year of the signing of the law in July 2008, in unclassified form but may include a classified annex.

- a. Describe your understanding of the purpose of a public report.

Answer: As I understand it, the purpose of this public report is to inform the public about the President's Surveillance Program, without disclosing classified information that could harm the national security. For instance, as I understand it the report would not disclose the name or identity of any individual or entity of the private sector that participated in the Program or with whom there was communication about the Program, to the extent that information is classified.

- b. Describe the responsibility that you anticipate that the AAG/NS will have in recommending what should be declassified and the standards that should be applied to that determination.

Answer: I anticipate that the AAG/NS will participate in the classification review of the report as directed by the Attorney General.

Administration of Parts of FISA Other than Titles Added in 2008

QUESTION 6:

An objective of the FISA Amendments Act of 2008, as expressed by the Department of Justice, was to enable the U.S. Government to devote more of the time of attorneys and others to

implementation of portions of FISA that continue to require individual orders based on probable cause.

- a. Do you share the view that the FISA Amendments Act permits a reallocation of the work of personnel of the National Security Division?

Answer: If confirmed, I expect to review the allocation of personnel and resources within the Division to ensure that personnel and resources are optimally allocated to accomplish the Division's mission. As I explained in my opening statement before the Senate Judiciary Committee on February 25, "the FISA Amendments Act ... is a new statute, and I do not yet know exactly how it functions." Accordingly, any views I may hold in this area are necessarily tentative, and subject to revision if I am confirmed and later learn how the Act functions. Subject to those limits, I do believe that the Act may permit a reallocation of the work of personnel in the National Security Division, at least to some degree.

- b. What should the objectives of any such reallocation be?

Answer: The general objective of a reallocation should be to ensure that intelligence collection is effective and is conducted in accordance with the rule of law and appropriate regard for civil liberties. Subject to the limits set forth in response to sub-part a., any such reallocation could result in personnel of in the National Security Division devoting more time to implementation of portions of FISA that continue to require individual orders based on probable cause (particularly with respect to U.S. person targets), and perhaps also oversight.

December 2009 Sunset of Three FISA Provisions

QUESTION 7:

Pursuant to 28 C.F.R. § 0.72(a)(13), the Assistant Attorney General for National Security shall formulate legislative initiatives. Three FISA provisions – lone wolf coverage, roving wiretaps, and orders for documents – sunset on December 31, 2009.

- a. In your view, what evidence and issues should be considered by the Administration and by Congress in the consideration of whether to modify these provisions and either extend the sunsets or make the provisions, with or without amendments, permanent?

Answer: Among other things, I would want to consider any actual and possible use (and/or misuse) of the provisions in question since they were enacted; the relationship between the provisions and any recent amendments to FISA (e.g., in the FISA Amendments Act); the operational environment in which the provisions function and the continuing need or lack of need for them; and perhaps other factors. More generally, I would want to consult with career professionals in the government and consider the possible benefits of any legislative changes improving the statute against the possible costs in the form of disruption or uncertainty resulting from such changes.

- b. Are there any benefits, in your view, in aligning the sunset of these provisions with the sunset under the FISA Amendments Act of 2008 for Title VII of FISA on procedures regarding persons outside of the United States?

Answer: There may be a benefit to alignment in that it could reduce the number of instances in which the statute needs to be changed. Much would depend on the particulars of the situation.

Declassification of FISA Opinions

QUESTION 8:

At the end of last year, the FISA Court of Review released to the public a redacted version of its most recent opinion. What are your views regarding the issues to be considered in creating a regular process under which important rulings of law and key decisions of the FISA Court and the FISA Court of Review could be publicly released in an unclassified form?

Answer: As the co-author of a book on national security law and a law school teacher in that area, I appreciate the value of public information about FISA and other statutes, in keeping with the need to protect classified and otherwise non-public information. Our laws in this area, as in others, are strongest if they rest on the informed consent of the governed, and I regard as healthy an appropriate amount of public discourse regarding the legal bases for FISA court rulings. If I am confirmed, I will confer with the Court and with other members of the intelligence community to explore whether, consistent with the need to protect sensitive and classified information, it is appropriate to develop a process, or modify the existing process, for publication of certain significant decisions of the FISA Court of Review, and perhaps also the FISA Court, with appropriate redactions where necessary. I recognize that Members of the Committee have significant experience and expertise regarding this issue, and would solicit Members' views and counsel as well.

The Committee is familiar with the statutory obligation to report certain FISA matters to relevant congressional committees. Under 50 U.S.C. § 1871(a), the Attorney General is directed

to submit to certain committees of Congress, “in a manner consistent with the protection of the national security,” a report that includes the following: “a summary of significant legal interpretations of [FISA] involving matters before the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review, including interpretations presented in applications or pleadings filed with the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review by the Department of Justice; and copies of all decisions, orders, or opinions of the Foreign Intelligence Surveillance Court or Foreign Intelligence Surveillance Court of Review that include significant construction or interpretation of the provisions of this Act.” It may be worth considering whether it is appropriate for the government to establish a system under which it discloses publicly the portions of the report required by Section 1871(a) that would be disclosed in response to a properly submitted request for that report under the Freedom of Information Act.

National Security Letters

QUESTION 9:

In the USA PATRIOT Improvement and Reauthorization Act of 2005, Congress directed the undertaking of a DOJ Inspector General audit on the use of national security letters.

- a. What is your understanding of the principal benefits from or problems with national security letters?

Answer: National security letters are enormously valuable investigative tools. The principal benefits of NSLs are described in the Inspector General’s March 2007 report (page xxii): “FBI Headquarters and field personnel told us that they found national security letters to be effective in both counterterrorism and counterintelligence investigations. Many FBI personnel used terms to describe NSLs such as ‘indispensible’ or ‘our bread and butter.’” Approximately 50,000 NSLs are issued each year, *id.* at xix; NSLs were issued in approximately one-third of all FBI investigations in 2006 (March 2008 report at 109). Without any doubt, NSLs are important to the Department of Justice and other federal agencies.

The principal problems with national security letters are described in the Inspector General’s March 2007 report. These include use of one type of NSL when another should have been used (page xxix), “FBI agents’ unfamiliarity with the constraints on NSL authorities” (page xxx), lack of guidance to agents (pages xli-xlii), difficulty tracking the use of NSLs (page xviii), underreporting of errors to the Intelligence Oversight Board (page xxxiii), and flawed NSL approval memos (page xli). A

forthcoming report may reveal additional problems with the use of so-called “exigent” NSLs (pages xxxiv, xxxvii; see March 2008 Report at 6).

In his March 2008 report on NSLs (at page 6), the Inspector General noted that “since issuance of our March 2007 report, the FBI and the Department have made significant progress in implementing the recommendations from that report and in adopting other corrective actions to address serious problems we identified in the use of national security letters. The FBI has also devoted significant energy, time, and resources toward ensuring that its field managers and agents understand the seriousness of the FBI’s shortcomings in its use of NSLs and their responsibility for correcting these deficiencies.”

In my current position, I am relying on the publicly-released versions of the Inspector General reports. Should I be confirmed, I will have access to far more detailed information on the current practices regarding NSLs, and may become aware of additional issues relevant to the analysis here.

- b. What is your understanding of the main conclusions of the Department of Justice Inspector General audit of national security letters?

Answer: See answer above.

- c. What is your understanding of the administrative reforms implemented by the FBI in response to that audit?

Answer: See answer above. Those reforms are described in detail in the Inspector General’s March 2008 report.

- d. What is your view on what issues should be addressed, and what evidence should be gathered, in regard to whether to place into law any administrative improvements, any other changes to improve the effectiveness or lawfulness of national security letters, or to enact further improvements in response to any judicial decisions about national security letters?

Answer: I believe that NSLs, like other investigative tools, should exist in a form that renders these tools both effective for investigation, protective of civil liberties, and subject to appropriate oversight. If confirmed, I look forward to understanding fully the FBI’s operational experience with NSLs and any oversight issues relating to NSLs. With this information, I will be in a better position to suggest changes and will both keep the

Committee informed of, and if a legislative approach appears appropriate seek the Committee's assistance in enacting, improvements to accomplish those ends.

- e. To the extent not addressed in response to (d), describe the main outline of the proposal for national security subpoenas that you presented to the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties in April 2008.

Answer: In my testimony, I summarized the proposal as follows:

I believe Congress should enact a single statute, providing for national security subpoenas, to replace all of the current NSL provisions. This subpoena statute should contain or satisfy the following 10 elements. It should:

- (1) streamline and simplify current law, which is unnecessarily and harmfully complex;
- (2) provide for subpoenas to be issued by attorneys designated by the Attorney General;
- (3) make subpoenas available to all Intelligence Community agencies, as long as the subpoena is issued by a designated attorney for the government as described in (2) above, and limited to obtaining the types of information described in (5) below, and also subject, as desired, to additional limits for particular agencies (*e.g.*, CIA);
- (4) allow production of any tangible thing that is subject to compelled production via grand jury subpoena;
- (5) be limited to acquiring certain specified foreign intelligence information and Secret Service protective information, subject to additional limits by analogy to 50 U.S.C. § 1861(b)(2)(A) if desired;
- (6) impose a nondisclosure obligation on recipients, with the usual exceptions, that expires 60 days after a written objection is received by the government, unless the government obtains an extension order from the Foreign Intelligence Surveillance Court (FISC) – an approach that should satisfy *Doe v. Gonzales*, 500 F. Supp. 2d 379 (SDNY 2007) [note: this decision was affirmed in part and reversed in part on appeal, *Doe v. Mukasey*, 549 F.3d 861 (2nd Cir. 2008), with results similar to those in my proposal];
- (7) permit motions to quash, and to enforce, subpoenas in the FISC, using the “burdensome or oppressive” standard applicable to grand jury subpoenas

under Fed. R. Crim. P. 17(c) and *United States v. R. Enterprises, Inc.*, 498 U.S. 292 (1991);

- (8) provide the usual sort of prospective immunity for good-faith compliance;
- (9) require minimization procedures governing acquisition, retention and dissemination of information, and limits on the use of that information, along the lines of current 50 U.S.C. § 1861(g); and
- (10) adhere to the traditional oversight standard in requiring (and enabling) the Attorney General to keep the Congressional Intelligence and Judiciary Committees, as well as certain other Committees, "fully informed" on a semi-annual basis, and provide for three successive annual audits by the Justice Department's Inspector General.

Although I advanced a detailed proposal in an effort to be helpful to Congress, I was careful to "stress the tentative nature of my testimony, which is in part the product of a relatively brief period of thought unaided by inside knowledge of the current operational and threat environment (I was first contacted about the possibility of testifying one week ago)." I went on to state that "[m]y primary purpose here is to raise issues and provide technical support, not to take a strong position on any particular question."

- f. If confirmed, would you advocate that this proposal be made by the Administration and, if so, why?

Answer: I made the proposal as a private citizen, and as one without access to the current operational environment. If I were to be confirmed, I would not necessarily advocate that this proposal be made by the Administration (although I likewise would not rule it out). Any recommendation I would make would be advanced only after I had full access to operational information about the use or misuse of NSLs and extensive consultations with career personnel in DOJ and the FBI. In addition, if confirmed, my personal views (which were reflected in my testimony last year as a private citizen) would not necessarily determine the positions I would take, or recommend, in my capacity as Assistant Attorney General for National Security, at a time when I am representing the United States.

*Priorities of the Attorney General***QUESTION 10:**

Have you discussed with the Attorney General his specific expectations of you, if confirmed as Assistant Attorney General, and his expectations of the National Security Division as a whole? If so, please describe those expectations.

Answer: I have discussed with the Attorney General his specific expectations of me, and the National Security Division, and if confirmed I expect to have further discussions. Among the Attorney General's expectations are that the Division and I (if confirmed) will assist the Department in its highest priority, which is protecting national security and protecting the American people from terrorism. In particular, the Attorney General expects that the Division and I (if confirmed) will fulfill our functions as described in relevant statutes, regulations, and the U.S. Attorneys' Manual. For example, the Attorney General expects that I will, if confirmed, perform the following functions as described in 28 C.F.R. § 0.72:

- [E]nsure that all of the Department's national security activities are coordinated;
- Develop, enforce, and supervise the application of all federal criminal laws related to the national counterterrorism and counterespionage enforcement programs, except those specifically assigned to other Divisions;
- Administer the Foreign Intelligence Surveillance Act;
- Oversee the development, coordination, and implementation of Department policy, in conjunction with other components of the Department as appropriate, with regard to intelligence, counterintelligence, or national security matters;
- Provide legal assistance and advice, in coordination with the Office of Legal Counsel as appropriate, to Government agencies on matters of national security law and policy;
- Provide oversight of intelligence, counterintelligence, or national security matters by executive branch agencies to ensure conformity with applicable law, executive branch regulations, and Departmental objectives;
- Serve as the primary liaison to the Director of National Intelligence for the Department of Justice.

Evaluation of National Security Division

QUESTION 11:

On the basis of your participation on the Department of Justice Agency Review Team, as part of the President-elect Transition Team, as well as any other applicable observations, do you have preliminary observations on strengths or weaknesses of the National Security Division (NSD), including matters which you would like to study further, relating to organization, allocation of personnel, skills and training, or any other factors that you believe are relevant to a successful mission for the NSD? If so, please describe.

Answer: The Agency Review Team was divided into groups, and I led the group reviewing the National Security Division, the FBI, and another component. In that capacity, I interviewed personnel from the National Security Division and the FBI, reviewed unclassified documents, and had access to some limited classified information in certain areas. This experience was part of what led me to my opening statement at my confirmation hearing before the Senate Judiciary Committee, which identifies three procedural issues and three substantive issues on which I would expect to focus in the short run if confirmed. I understand that the Committee is already in possession of that statement; I am happy to provide additional copies upon request.

Guidelines under Executive Order 12333**QUESTION 12:**

28 C.F.R. § 0.72(b)(1) provides that the Assistant Attorney General for National Security shall advise and assist the Attorney General in carrying out responsibilities under Executive Order 12333. For the following requirements of Executive Order 12333, as amended in July 2008, describe the principal matters to be addressed by each of the required Attorney General-approved guidelines or procedures, the main issues you believe need to be resolved in addressing them, and your understanding of the schedule and priorities for completing them (or indicate whether the existing named guidelines or procedures are deemed sufficient).

Answer: I appreciate the relevance and importance of this question, and of the information it seeks. In my current position as a nominee and an outsider, however, I do not believe I can meaningfully answer the question or provide the information sought. I look forward to addressing the implementation of Executive Order 12333 if confirmed.

- a. Guidelines under section 1.3(a)(2) for how information or intelligence is provided to, or accessed by, and used or shared by the Intelligence Community, except for information excluded by law, by the President, or by the Attorney General acting under presidential order in accordance with section 1.5(a).

Answer: Please see answer above.

- b. Procedures under section 1.3(b)(18) for implementing and monitoring responsiveness to the advisory tasking authority of the Director of National Intelligence for collection and analysis directed to departments and other U.S. entities that are not elements of the Intelligence Community.

Answer: Please see answer above.

- c. Procedures under section 1.6(g) governing production and dissemination of information or intelligence resulting from criminal drug intelligence activities abroad if the elements of the IC involved have intelligence responsibilities for foreign or domestic criminal drug production and trafficking.

Answer: Please see answer above.

- d. Regulations under section 1.7(g)(1) for collection, analysis, production and intelligence by intelligence elements of the FBI of foreign intelligence and counterintelligence to support national and departmental missions.

Answer: Please see answer above. FBI Guidelines are discussed in the answer to Question 13.

- e. Procedures under section 2.3 on the collection, retention, and dissemination of United States person information and on the dissemination of information derived from signals intelligence to enable an Intelligence Community element to determine where the information is relevant to its responsibilities.

Answer: Please see answer above.

- f. Procedures under section 2.4 on the use of intelligence collection techniques to ensure that the Intelligence Community uses the least intrusive techniques feasible within the U.S. or directed at U.S. persons abroad.

Answer: Please see answer above.

- g. Procedures under section 2.9 on undisclosed participation in any organization in the United States by anyone acting on behalf of an IC element.

Answer: Please see answer above.

*Attorney General Guidelines for Domestic FBI Operations***QUESTION 13:**

In September 2008, Attorney General Mukasey issued guidelines on the domestic operations of the Federal Bureau of Investigation. To implement the guidelines, the FBI developed and put into effect a Domestic Investigations and Operations Guide, referred to as the DIOG. In December, the FBI advised the Committee that it plans an extensive reevaluation of the DIOG one year from its issuance, including whether its protective provisions and limitations are adequate

- a. What is your understanding of the main decisions made by the Attorney General in the September 2008 guidelines for domestic FBI operations?

Answer: I believe the main decisions made by then-Attorney General Mukasey in the new FBI Guidelines can usefully be divided into three broad categories: structural, philosophical, and operational.

Structurally, the new Guidelines effect two notable changes. *First*, they combine formerly separate guidelines into a single document, and establish more uniform standards for FBI law enforcement and intelligence activities. Until the new Guidelines, national security investigations were governed by the National Security Investigations (NSI) Guidelines, and most criminal investigations were regulated by the General Crimes Guidelines, although agents could use either set of guidelines where they overlapped (e.g., in terrorism investigations). *Second*, the new Guidelines are entirely unclassified, although they refer to classified materials in some areas. By contrast, the 2003 NSI Guidelines were largely classified, and were released to the public only in redacted form.

Philosophically, the new Guidelines articulate three significant ideas. *First*, they explain that the FBI's overriding mission is to protect against terrorism, and that criminal prosecution is only one of several ways to achieve that protection. They emphasize that, as an intelligence agency, the FBI is "not limited to 'investigation' in a narrow sense, such as solving particular cases," but may also collect information to support "broader analytic and intelligence purposes." This is part of the FBI's continuing transformation into a security service. *Second*, the Guidelines note the FBI's authority and status as the lead federal agency in the fields of federal law enforcement, counterintelligence, and (within the United States) affirmative foreign intelligence. *Third* and finally, the Guidelines emphasize oversight from DOJ in a way not previously seen, specifically referring to National Security Reviews of FBI Headquarters and field offices conducted by the National Security Division. This may be part of an evolution of the working relationship between the National Security Division and the FBI, to include discrete legal services (e.g., preparing FISA applications or indictments), after-the-fact oversight (though National Security Reviews), and a real-time operational partnership.

Operationally, the new Guidelines continue to divide investigative activity into four main categories: assessments (formerly known as threat assessments); preliminary investigations; full investigations; and enterprise investigations (which existed solely under the General Crimes Guidelines, not the NSI Guidelines, but which could be used in terrorism investigations). The most significant changes concern assessments. Although the public portions of the NSI Guidelines did not specify all of the investigative measures permitted, they described threat assessments as involving “relatively non-intrusive techniques,” such as “obtaining publicly available information and checking government records.” Under the new Guidelines, assessments “require an authorized purpose but not any particular factual predication,” and may involve any of the following: review of publicly available information (including commercially available online resources); review of pre-existing records at DOJ or another federal, state, local, or foreign governmental agency; use of human sources; interviews (including pretextual interviews); physical observation and consensual monitoring; and the use of grand jury subpoenas (although NSLs remain unavailable). At least three of these techniques – tasking informants, conducting pretextual interviews, and physical surveillance – were not permitted in threat assessments under the 2003 NSI Guidelines.

- b. What is your understanding of the principal concerns raised by civil liberties groups and others about these Attorney General guidelines, such as concerns about pretext interviews and physical surveillance?

Answer: As I understand it, concerns have been focused on the use of assessments, particularly those that involve collection of information necessary to the evaluation of threats and vulnerabilities and to facilitate intelligence analysis and planning (referred to by the FBI as Type 3 and Type 4 assessments, respectively). In a letter sent to Chairman Rockefeller and Ranking Member Bond of this Committee on December 15, 2008, the FBI’s General Counsel acknowledged these concerns and identified ways in which they were and will be addressed. Concerns have also been raised about racial profiling. In her December 15 letter, the FBI’s General Counsel explained that “[w]e share the concern and have devoted considerable time and effort to educating our employees regarding how race and ethnicity can - and cannot - be used during Assessments. This is an issue that we expect to monitor closely to ensure compliance.”

- c. In what ways, and how well or not, do you believe that the Attorney General guidelines and the implementing FBI DIOG address those concerns?

Answer: I have not yet reviewed the DIOG in detail, but would expect to do so if confirmed, as explained in my opening statement to the Senate Judiciary Committee. See also the answer to part e of this question, which would inform my judgment about whether and how the Guidelines and the DIOG address concerns.

- d. What will be the role of the National Security Division in the planned FBI re-evaluation, as well as any evaluation by the Attorney General, of the September 2008 guidelines?

Answer: I expect the National Security Division, including its Office of Law and Policy, to participate significantly in the planned re-evaluation of the new Guidelines, subject to direction from the Attorney General.

- e. What standards should be applied in the re- evaluation and what empirical evidence should be gathered and analyzed as part of that review?

Answer: Among other things, I would want to learn how the Guidelines are understood, and function, at ground level. I would also want to hear the perspective of field agents about areas of difficulty or ambiguity, and any significant uses or misuses of the new Guidelines. I would want to know the results of the FBI's web-based and in-person training, the monitoring initiative devised by the FBI's Office of Integrity and Compliance, the results of any National Security Reviews undertaken by the National Security Division (through the Oversight Section of the Division's Office of Intelligence), reports made to the FBI's Corporate Policy Office, and additional input from Congress and the public.

- f. Please explain in more detail your statement at your Judiciary Committee nomination hearing concerning the guidelines that "in at least two ways, I think these new guidelines reflect positive developments; in other ways, however, they raise some questions that I would like to explore further."

Answer: In discussing positive developments, I was referring to some of the structural, philosophical, and operational changes described above, including the increase in simplicity and transparency of the new Guidelines, and the way they reflect and encourage the FBI's continuing transformation into a security service and what may be the continuing evolution of its working relationship with NSD personnel, particularly in operational matters. In noting questions, I was referring to the civil liberties concerns described above.

*Oversight of Intelligence Activities***QUESTION 14:**

28 C.F.R. § 0.72(17) provides that the Assistant Attorney General for National Security shall provide oversight of intelligence, counterintelligence, and national security matters by executive branch agencies to ensure conformity with applicable law, regulations, and departmental objectives and report to the Attorney General.

- a. What is your understanding of the National Security Division's oversight role concerning intelligence activities of the FBI?

Answer: My current understanding is that the National Security Division is responsible for overseeing the FBI's foreign intelligence, counterintelligence, and other national security activities to ensure compliance with the law and the protection of civil liberties. I know that NSD has a number of specific oversight responsibilities relating to the approval of investigations and operational techniques under the Attorney General Guidelines. NSD obviously exercises oversight through the FISA process and the various reviews mandated by the amended FISA statute. I understand that both FISA and the Guidelines embody an expectation that NSD will conduct robust oversight of FBI national security activities, and I am fully committed to maintaining NSD's role in this respect. I look forward to working with this Committee in enhancing NSD's ability to conduct effective oversight of FBI operations.

- b. What is your understanding of its oversight role concerning intelligence activities, and related prosecutorial activities, undertaken in the offices of United States Attorneys?

Answer: My current understanding is that NSD's oversight role concerning national security prosecutions and related activities in the U.S. Attorney's offices is exercised in two ways. First, there are a number of formal coordination requirements established by the Attorney General that give NSD official approval authority over the use of certain statutes relevant to national security prosecutions. Second, on a less formal level, NSD coordinates the efforts of the U.S. Attorneys to shape consistent approaches to national security threats. This coordination effort involves primarily the interaction that NSD's Counterespionage and Counterterrorism Sections have with the U.S. Attorney's Offices, as well as the support and training that NSD provides to Assistant U.S. Attorneys and through the Anti-Terrorism Advisory Councils.

- c. What is your understanding of its oversight role concerning intelligence activities of IC elements outside of the Department of Justice?

Answer: I understand that NSD exercises some oversight of IC elements outside the Department of Justice by virtue of FISA statute. Activities of IC elements that fall within FISA are necessarily reviewed by NSD as part of the process of obtaining FISA authority. In addition, I understand that NSD serves as the Attorney General's principal liaison to the Office of the Director of National Intelligence, and thus reviews any ODNI policy that requires consultation with, or the approval of, the Attorney General pursuant to Executive Order 12333 or other legal authorities. As a nominee, and an outsider, I do not have direct experience of how these processes function in practice.

- d. Are there improvements, in terms of resources, methodology, and objectives that you believe should be considered?

Answer: At present, I do not have access to all the information on how NSD's oversight responsibilities are implemented and on issues that may be arising from the oversight process. If confirmed, I will make it a priority to review all of NSD's oversight activities and will then be in a better position to recommend improvements.

Counterterrorism Prosecutions

QUESTION 15:

28 C.F.R. § 0.72(a)(8) assigns to the Assistant Attorney General for National Security the responsibility to prosecute and coordinate prosecutions and investigations targeting individuals and organizations involved in terrorist acts at home or against U.S. persons or interests abroad, or that assist in the financing of or providing support to those acts.

- a. Describe the personnel resources, both attorneys and others, within the National Security Division that are devoted to the prosecution of terrorism cases.
- b. **Answer:** As I understand it, the Counterterrorism Section (CTS) within NSD currently has 51 attorneys and 18 support staff.
- c. Describe the role that the Division has played since its inception in terrorism prosecutions in United States district courts and on appeal to the U.S. courts of appeals.

Answer: In my current position as a nominee and an outsider, I do not believe I can provide the specific information sought by this question. As I understand it, based on publicly available information, the Counterterrorism Section, working in conjunction with the United States Attorneys' Offices, is responsible for cases involving domestic and international terrorism, including terrorist financing. Its prosecutions fall under a variety of statutes, including material support of terrorism, weapons of mass destruction crimes, hostage-taking, conspiracy within the United States to murder, kidnap, or maim persons or to damage property overseas, and murder of United States nationals abroad, to name just a few offenses.

The cases handled by the Counterterrorism Section often involve challenging issues including the scope of U.S. jurisdiction over overseas offenses, admissibility of statements obtained by agents of other governments, the applicability of the Classified Information Procedures Act, the application of the Foreign Intelligence Surveillance Act to admission of certain evidence, issues of statutory interpretation, and constitutional challenges.

- d. Describe the role that the Division has played with respect to decisions whether to prosecute before U.S. military commissions, and in matters for which prosecutions had occurred or had begun.

Answer: As a nominee, and an outsider, I do not exactly know what role the Division has played other than that which has been made publicly available. As I understand it, shortly before the creation of the National Security Division, President Bush announced that a number of high value detainees had been transferred to Guantanamo Bay Naval Base and would be considered for prosecution by military commission. The first Assistant Attorney General for National Security designated a group of approximately twelve experienced prosecutors who, along with a large group of FBI agents and analysts, worked alongside the Department of Defense in assembling the evidence and putting together certain military commission cases. It is also my understanding that pursuant to President Obama's January 22, 2009 Executive Order, military commission proceedings have been halted.

- e. Describe the role that the Division is expected to play in the implementation of the President's executive order on Guantanamo, including prosecutions that occur as a result of that executive order.

Answer: As a nominee, and an outsider, I do not exactly know what role the Division will play, but I do expect that it will be significantly involved in implementation of the executive order, including prosecutions, and as I noted in my opening statement to the Senate Judiciary Committee, the Division's senior career deputy has been named as the Executive Director of the detainee review.

*OLC Opinions on Matters within Responsibility of the National Security Division***QUESTION 16:**

With respect to opinions of the Office of Legal Counsel on matters within or related to the responsibilities of the National Security Division, or if preceding the establishment of the Division were related to such matters as electronic surveillance, physical searches, or other methods of national security investigations that would now be of interest to the Division, how should the Assistant Attorney General for National Security respond if requested by the Committee to undertake the following in conjunction with the Office of Legal Counsel:

- a. Provide to the Committee a comprehensive list and description of OLC opinions on these subjects for opinions that remain precedent of the Office of Legal Counsel or are of significant historical value in understanding the development of the Government's legal theories in support of the matters addressed in the opinions.
- b. Provide to the Committee copies of those opinions, for handling in accordance with their classification, which are identified by or on behalf of the Committee as useful to it in the performance of its oversight responsibilities.
- c. Promptly update the list and description as new opinions are issued and provide such new opinions to the Committee on request.

Answer: As a nominee, and an outsider, I have no access to the requested documents and information about the current practices of OLC. I am aware that the Attorney General is committed to greater transparency in general. I share the Attorney General's belief that transparency and cooperation with Congress are important. In general, I understand that knowing the legal advice guiding the actions of the federal government officers on national security matters is important to the Committee's oversight function. I understand that Department has begun a review of many of the opinions in this area already and that OLC has already released a number of heretofore undisclosed opinions bearing on national security and Presidential power. If confirmed, I will work closely with the AAG for OLC to ensure that the Committee receives appropriate, timely information regarding the issuance of new OLC opinions in this area.

Status of Litigation on the President's Terrorist Surveillance Program and the FISA Amendments Act of 2008

QUESTION 17:

For pending litigation on (1) the constitutionality and implementation of the liability protection provisions of Title VIII of the Foreign Intelligence Surveillance Act of 1978 (as added by Title II of the FISA Amendments Act of 2008), now pending in the Northern District of California in *In Re: National Security Agency Telecommunications Records Litigation*, MDL No. 06-1791-VRW; and (2) alleged violations of the Constitution and federal laws by the National Security Agency and named U.S. Government officials arising from the President's Terrorist Surveillance Program, now pending in the Northern District of California in *Jewel, et al. v. National Security Agency, et al.* No. 08-cv-4373-VRW, describe the following:

- a. Your understanding of the main issues in each of these cases.
- b. The position of the U.S. Government on those issues and whether and what the Department of Justice has stated, in filings after the change of Administration concerning the position of the United States.
- c. Whether the position of the United States is not yet resolved.
- d. If the position of the United States is not yet resolved, the role of the Assistant Attorney General for National Security in determining what the position of the United States should be.
- e. And your views on the legal principles that should be brought to bear in determining what the position of the United States should be.

Answer: As a nominee, and an outsider, my knowledge and understanding of ongoing litigation, and the development and assertion of government positions, is limited to that set forth in public information regarding that litigation. I do not have non-public knowledge of information regarding whether the government intends to change its position in the cases mentioned above. If I am confirmed, I will coordinate with the Civil Division to ensure that the National Security Division's views are considered in the development and assertion of government positions. I believe the position of the United States in any litigation should be determined the applicable law and, where the law does not determine a specific position, the best interest of the United States.

*Professional Experience***QUESTION 18:**

For each of the following, describe specifically how your experiences will enable you to serve effectively as the Assistant Attorney General for National Security. Include within each response a description of issues relating to the National Security Division that you can identify based on those experiences.

- a. President-Elect Transition Team, Member of the Department of Justice Agency Review Team

Answer: As described above, the Agency Review Team was divided into groups, and I led the group reviewing the National Security Division, the FBI, and another component. In that capacity, I interviewed personnel from the National Security Division and the FBI, reviewed unclassified documents, and had access to some limited classified information in certain areas. This experience was part of what led me to my opening statement before the Senate Judiciary Committee, which identifies three procedural issues and three substantive issues on which I would expect to focus in the short run if confirmed. I understand that the Committee is already in possession of that statement; I am happy to provide additional copies upon request.

- b. Co-Author, *National Security Investigations and Prosecutions*, and other public commentary on national security authorities

Answer: My treatise, and my other scholarly work, have given me an appreciation and understanding of the law that governs national security investigations and other national security activity undertaken by the National Security Division and the FBI.

- c. Senior Vice President and Deputy General Counsel, Chief Ethics and Compliance Officer, and formerly Vice President, Legal Department, Time Warner, Inc.

Answer: At Time Warner, I further developed my management, administrative, and budget-related skills. I also learned more about the exercise of governmental power, as I worked on the SEC and DOJ investigations of Time Warner's AOL Division.

- d. Associate Deputy Attorney General, Department of Justice

Answer: As Associate Deputy Attorney General, my responsibilities included (1) developing and implementing national security law and policy, conducting oversight of the Intelligence Community, and representing the Department of Justice in the National Security Council and other inter-agency settings; (2) briefing and testifying before

Congress, in open and closed sessions, to support proposed legislation and respond to oversight requests; (3) supervising national security wiretapping and related investigatory matters, including use of the Foreign Intelligence Surveillance Act of 1978 (FISA); and (4) devising and implementing a national security curriculum and training program for FBI agents and Department attorneys who work on foreign intelligence matters. All of these experiences should enable me, if confirmed, to serve effectively as the Assistant Attorney General for National Security.

e. Attorney, Criminal Division (Appellate Section), Department of Justice

Answer: My work as a trial and appellate prosecutor helped me learn about litigation and criminal law, including domestic terrorism (through the prosecution of the Montana Freeman). It also helped me understand the work of the U.S. Attorneys' Offices. This experience would be relevant to my supervision of the Counterterrorism and Counterespionage Sections in the National Security Division, and my approval of indictments and other actions in national security cases under Title 9-90.020 of the U.S. Attorney's Manual and related authorities, if I were confirmed.

QUESTION 19:

In your testimony before the Senate Judiciary Committee, you testified that the recent FISA Court of Review case "stands for the proposition that the PAA is constitutional." However, the court did not consider whether the PAA or any of its provisions were constitutional on their face and did not uphold the constitutionality of its application in all cases, but rather only as it was applied to one company. As the court stated, it "may not speculate about the validity of the law as it might be applied in different ways or on different facts." Do you agree that the court upheld the constitutionality of the PAA only as applied, and only as applied to one company?

Answer: Yes. The Court of Review expressly states that where "a statute has been implemented in a defined context, an inquiring court may only consider the statute's constitutionality in that context; the court may not speculate about the validity of the law as it might be applied in different ways or on different facts." Opinion at page 12. The Court determined that it would "deem petitioner's challenge an as-applied challenge and limit our analysis accordingly." *Id.* (Other aspects of the Court's analysis – e.g., its discussion of Fourth Amendment "special needs" doctrine – appear to be more general.) At the end of its opinion, the Court of Review refers to its "decision to uphold the PAA as applied in this case." *Id.* at 29 (emphasis added).

QUESTION 20:

In your testimony before the Senate Judiciary Committee, you testified that "much of [the FISA Court of Review's] analysis would be applicable to the FISA Amendments Act." However, the PAA included a "clearly erroneous" standard for review that is not included in the FAA. Given that the court placed the burden of proof on the petitioner to prove "actual harm, any egregious

risk of error, or any broad potential for abuse” and that it relied on the good faith of the government, do you believe that this change in the standard of review could alter how the court would review the facts of a case involving the FAA and could result in different legal analysis?

Answer: Yes, various differences between the two statutes, or the facts of the situations in which they are applied (see answer above), could result in different legal analysis.

QUESTION 21:

In your testimony before the Senate Judiciary Committee, you testified that the recent FISA Court of Review case was a “well written opinion.” However, the process was not fully adversarial, in that the petitioner did not have access to all relevant information. Do you agree that the court’s analysis could have been altered had the petitioner had access to all relevant information, including problems related to the implementation of the PAA, and been able to bring it before the court?

Answer: I do not know precisely to what extent the petitioner had access to all relevant information, or whether and to what extent such access could have altered the Court of Review’s analysis (assuming the Court itself had access to all relevant information), but in my testimony I referred to the redacted portions of the Court of Review’s opinion, noted that “I would want to see those and understand more fully what was going on there,” and stated that “[t]hose are some of the concerns and caveats that I have about the opinion.”

QUESTION 22:

In your testimony before the Senate Judiciary Committee, you testified that, under the third category of the Justice Jackson analysis, “there are situations where the president may disregard the statute.” At his confirmation hearing, Attorney General Holder gave two examples of statutes that the president had the constitutional authority to disregard, both of which were “obviously unconstitutional”: a law making the Secretary of Defense Commander-in-Chief and a law removing women’s right to vote.

Do you agree that constitutional authority for the president to disregard a statute almost always will be based, as Attorney Holder indicated, on the statute being outside of Congress’s constitutional authority?

Answer: I agree with the Attorney General’s testimony.

Attorney General Holder testified that he did not see in the FISA statute anything to indicate that the president can disregard the statute. Do you agree?

Answer: Yes. I do not see anything in the FISA statute to indicate this.

If you agree with these propositions, please explain your testimony that you “could not evaluate the constitutionality of the [Terrorist Surveillance Program] without the facts. I think it’s a fact intensive question.”

Answer: I believe that these questions can turn on the facts, and I believe it is important to understand the facts before rendering a final judgment on such a grave and important matter of constitutional law. That does not mean, however, that the President’s authority to disregard a federal statute is broad. On the contrary, as I testified before the Senate Judiciary Committee, as far as I know the Supreme Court has never upheld the exercise of the President’s power as Commander-in-Chief to violate a federal statute. It would be a grave and extraordinary event for the President to disregard a duly enacted statute. By far the better approach, I believe, would be for the President to work with Congress, in an effort to place himself within the first, rather than the third, of the three categories identified in Justice Jackson’s famous concurring opinion in the Steel Seizure case. This is where the President is strongest.

QUESTION 23:

Attorney General Holder was asked whether the president has “the authority, acting as the commander in chief, to authorize warrantless searches of Americans’ homes and wiretaps of their conversations in violation of criminal and foreign intelligence statutes.” He replied “it’s difficult to imagine a set of circumstances, given the hypothetical you used and given the statutes that you referenced, that the president would be acting in an appropriate way given the Jackson construct that I see as a good one.” Do you agree?

Answer: Yes.

SELECT COMMITTEE ON
INTELLIGENCE

UNITED STATES SENATE



QUESTIONNAIRE FOR COMPLETION BY
PRESIDENTIAL NOMINEES

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

**QUESTIONNAIRE FOR COMPLETION BY
PRESIDENTIAL NOMINEES**

PART A - BIOGRAPHICAL INFORMATION

1. NAME: David S. Kris
2. DATE AND PLACE OF BIRTH: September 28, 1966; Boston, MA
3. MARITAL STATUS: Married
4. SPOUSE'S NAME: Jody Ann Kris
5. SPOUSE'S MAIDEN NAME IF APPLICABLE: Jody Ann Manier
6. NAMES AND AGES OF CHILDREN:

NAME

AGE

REDACTED

7. EDUCATION SINCE HIGH SCHOOL:

<u>INSTITUTION</u>	<u>DATES ATTENDED</u>	<u>DEGREE RECEIVED</u>	<u>DATE OF DEGREE</u>
Harvard Law School	August 1988 to June 1991	J.D.	June 1991
Haverford College	August 1984 to May 1988	B.A.	May 1988

8. EMPLOYMENT RECORD (LIST ALL POSITIONS HELD SINCE COLLEGE, INCLUDING MILITARY SERVICE. INDICATE NAME OF EMPLOYER, POSITION, TITLE OR DESCRIPTION, LOCATION, AND DATES OF EMPLOYMENT.)

<u>EMPLOYER</u>	<u>POSITION/TITLE</u>	<u>LOCATION</u>	<u>DATES</u>
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- A. President-Elect Transition Team (November 2008 to January 20, 2009)
Member of the DOJ Agency Review Team.

- B. Time Warner, Inc. (June 2003 to present)
One Time Warner Center
New York, NY 10019

and

800 Connecticut Ave., N.W., Suite 800
Washington, DC 20006.

Senior Vice President and Deputy General Counsel (February 2006 to present)
Chief Compliance Officer (November 2005 to present)
Vice President, Legal Department (June 2003 to November 2005).
- C. Georgetown University Law School (January 2008 to present)
600 New Jersey Ave., N.W.
Washington, DC 20001

Adjunct Professor of Law.
- D. Brookings Institution (2008 to present)
1775 Massachusetts Ave., N.W.
Washington, DC 20036

Nonresident Senior Fellow.
- E. United States Department of Justice (September 1992 to May 2003)
950 Pennsylvania Ave., N.W.
Washington, DC 20535

Associate Deputy Attorney General (July 2000 to May 2003)
Attorney, Criminal Division (September 1992 to July 2000).
- F. Judge Stephen S. Trott, 9th Circuit (August 1991 to August 1992)
660 U.S. Courthouse
550 West Fort Street
Boise, ID 83706

Law clerk.
- G. Professor Philip Heymann (December 1989 to June 1991)
Harvard Law School
1563 Massachusetts Ave.
Cambridge, MA 02138

Research Assistant.
- H. Ropes & Gray (June 1990 to August 1990)
One International Place
Boston, MA 02110

Summer Associate.
- I. Professor Laurence Tribe (October 1989 to February 1990)
Harvard Law School
1563 Massachusetts Ave.

Cambridge, MA 02138

Research Assistant.

- J. Middlesex County District Attorney (June 1989 to August 1989)
40 Thorndike Street
Cambridge, MA 02138

Summer Intern.

- K. Dr. Craig Henderson (July 1988 to August 1988)
44 Binney Street
Boston, MA 02115

Intern.

- L. Fidelity Investments (June 1988 to July 1988)
World Trade Center
568 E. First Street
Boston, MA 02127

Secretary.

9. GOVERNMENT EXPERIENCE (INDICATE EXPERIENCE IN OR ASSOCIATION WITH FEDERAL, STATE, OR LOCAL GOVERNMENTS, INCLUDING ADVISORY, CONSULTATIVE, HONORARY, OR OTHER PART-TIME SERVICE OR POSITION. DO NOT REPEAT INFORMATION ALREADY PROVIDED IN QUESTION 8):

See question 8

10. INDICATE ANY SPECIALIZED INTELLIGENCE OR NATIONAL SECURITY EXPERTISE YOU HAVE ACQUIRED HAVING SERVED IN THE POSITIONS DESCRIBED IN QUESTIONS 8 AND/OR 9.

I have expertise in the law and operations associated with national security investigations and other national security issues handled by the Department of Justice.

11. HONORS AND AWARDS (PROVIDE INFORMATION ON SCHOLARSHIPS, FELLOWSHIPS, HONORARY DEGREES, MILITARY DECORATIONS, CIVILIAN SERVICE CITATIONS, OR ANY OTHER SPECIAL RECOGNITION FOR OUTSTANDING PERFORMANCE OR ACHIEVEMENT):

Attorney General's Award for Exceptional Service (2002 and 1999).
Assistant Attorney General's Award for Special Initiative (1998).
Awards for Special Achievement (various dates prior to 2000).

12. ORGANIZATIONAL AFFILIATIONS (LIST MEMBERSHIPS IN AND OFFICES HELD WITHIN THE LAST TEN YEARS IN ANY PROFESSIONAL, CIVIC, FRATERNAL, BUSINESS, SCHOLARLY, CULTURAL, CHARITABLE, OR OTHER SIMILAR ORGANIZATIONS):

<u>ORGANIZATION</u>	<u>OFFICE HELD</u>	<u>DATES</u>
American Bar Association	No office	1992 to 2003

Brookings Institution	Nonresident Senior Fellow	2008 to present
Palisades Pool Association	No office	May 2007 to present
Suburban Nursery School	No office	September 2003 to present
Westmoreland Hills Neighborhood Association	No office	approximately 2000 to present
Edward Bennett Williams Inn of Court	Barrister	1995 to 2007

I may have had a (free) membership in the Harvard Club shortly after graduating from law school.

13. PUBLISHED WRITINGS AND SPEECHES (LIST THE TITLES, PUBLISHERS, AND PUBLICATION DATES OF ANY BOOKS, ARTICLES, REPORTS, OR OTHER PUBLISHED MATERIALS YOU HAVE AUTHORED. ALSO LIST ANY PUBLIC SPEECHES YOU HAVE MADE WITHIN THE LAST TEN YEARS FOR WHICH THERE IS A TEXT OR TRANSCRIPT. TO THE EXTENT POSSIBLE, PLEASE PROVIDE A COPY OF EACH SUCH PUBLICATION, TEXT, OR TRANSCRIPT):

I have done my best to identify the requested material through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Meet David S. Kris – Featured Author (October 2008).

West Key Authors, David Kris and Doug Wilson (date unknown but probably 2008).

Summary of amendments to the Foreign Intelligence Surveillance Act made after September 11, 2001 (July 2008).

David S. Kris, *A Guide to the New FISA Bill, Parts I-III* (June 21-25, 2008).

David S. Kris, *Modernizing the Foreign Intelligence Surveillance Act* (November 15, 2007). I recently submitted a revised version of this paper to Brookings, but it has not yet been published.

David S. Kris & J. Douglas Wilson, *NATIONAL SECURITY INVESTIGATIONS AND PROSECUTIONS* (August 2007). My co-author and I have done work on updates to this book, but the work is not yet complete.

David S. Kris, *Searching the Haystacks* (August 29, 2007); David S. Kris, *Is Wiretapping at Embassies Off Limits Now* (August 29, 2007); David S. Kris, *Continuing the Conversation* (August 30, 2007).

Response to Defense of Warrantless Wiretapping Program as Set forth in a Letter from the Department of Justice to Certain Members of Congress on December 22, 2005 and a Whitepaper Released by the Department of Justice on January 19, 2006 (March 2006).

The Rise and Fall of the FISA Wall, 17 Stan. L. & Policy Rev. 487 (2006).

Press Conference, Department of Justice, concerning the Foreign Intelligence Surveillance Court of Review's decision (November 18, 2002).

Collateral Review of Federal Criminal Conviction (monograph published internally by the Department of Justice) (1998).

Interpreting 18 U.S.C. § 2331 Under U.S. and International Law, 27 Harv. J. on Legis. 579 (1990).

Philip B. Heymann and David S. Kris, *And There Should be Other Prosecutions Too*, Washington Post, Page B7 (January 7, 1990).

Statement of David Kris before the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the House Committee on the Judiciary Hearing on H.R. 3189, the National Security Letters Reform Act of 2007 (April 15, 2008).

Letter to The Honorable John D. Rockefeller IV and The Honorable Christopher S. Bond, Chairman and Vice-Chairman of the Senate Select Committee on Intelligence concerning Comments on the Foreign Intelligence Surveillance Modernization Act of 2007 (May 1, 2007).

Answers to Questions for the Record for David Kris, sent to Senator Specter (April 21, 2006).

Testimony of David S. Kris before the Committee on the Judiciary, United States Senate (March 28, 2006).

Emails exchanged with Courtney Elwood re NSA surveillance (December 2005 – January 2006), released by DOJ under the Freedom of Information Act.

Testimony of David S. Kris before the Senate Select Committee on Intelligence (May 24, 2005).

Testimony of David S. Kris before the Subcommittee on Crime, Terrorism, and Homeland Security (April 28, 2005).

Interviews by Staff of the 9-11 Commission (January 15 and May 19, 2004), cited in the 9-11 Commission Report.

Statement of Associate Deputy Attorney General David S. Kris Before the Senate Judiciary Committee Concerning the Foreign Intelligence Surveillance Act (September 10, 2002).

Testimony of David S. Kris before the Senate Judiciary Committee, Subcommittee on the Constitution, Federalism, and Property Rights (October 3, 2001).

Testimony of David S. Kris before the Senate Select Committee on Intelligence Concerning Legislative Proposals to Respond to Terrorism (September 24, 2001).

In addition to testifying before Congress, I have several times since 2001 briefed staff of the Judiciary and Intelligence Committees, typically on a bipartisan basis.

American University Law School (October 28, 2008). I guest lectured at Professor Dan Marcus's class. I also guest lectured there on September 1, 2005; October 12, 2006; and March 4, 2008. No notes or transcript available.

I have for several years guest lectured at a class on national security taught by Magistrate Judge Jamie Orenstein and District Judge John Gleeson at NYU Law School. As far as I can determine, I guest lectured on October 17, 2007; October 11, 2006; October 3, 2005; and September 21, 2004. I recall speaking to the class in the fall of 2008, but cannot determine the exact date. No notes or transcript available.

NYU Law School (October 8, 2008). I guest lectured at Professor Sam Rascoff's class on national security. No notes or transcript available.

DOJ Cyber Deterrence Group, Department of Justice (July 10, 2008). I was invited by DOJ to a briefing and discussion of cyber deterrence issues. No notes or transcript available.

ABA Panel on Cyber Issues, Mandarin Hotel, Washington DC (June 19, 2008). I was part of a panel on cyber issues. No notes or transcript available.

RAND Conference on national security issues, Rand Office, Los Angeles, CA (May 5, 2008). I was part of a panel on privacy. No notes or transcript available.

University of California, Berkeley (April 14, 2008). I was part of a panel discussion on UK national security law with David Cole and John Yoo. No notes or transcript available.

University of Michigan Law School (April 2, 2008). I guest lectured on national security issues in Professor Joan Larsen's class and also spoke at an event sponsored by the Federalist Society. I gave a similar talk to Professor Larsen's class in 2007. I may do so again in 2009. No notes or transcript available.

ABA breakfast talk by Ken Wainstein et al., in which I asked a question from the audience (March 3, 2008), University Club, Washington, DC, as described in Ellen Nakashima and Paul Kane, *Wiretap Compromise in Works*, Washington Post at A3 (March 4, 2008).

Fordham Law School (February 20, 2008). I gave a talk on FISA modernization. No notes or transcript available.

Sentinel Society speech, New York Athletic Club, New York (January 24, 2008). I gave a talk on FISA modernization. No notes or transcript available.

AALS meeting in New York (January 4, 2008). I gave a talk on FISA modernization. No notes or transcript available.

ABA National Security Review (November 16, 2007). I spoke on a panel about surveillance law (substituting for Professor Jack Goldsmith). No notes or transcript available.

ABA breakfast talk, University Club, Washington, DC (September 27, 2007). I gave a talk on FISA modernization. Video available at <http://www.c-span.org/Watch/watch.aspx?MediaId=HP-A-7243>.

NCIX Counterintelligence and Cyber Threat Symposium, Park Hyatt Hotel, Washington, DC (October 19, 2007). I was part of a panel discussion on cyber issues. No notes or transcript available.

ABA National Security Forum, Washington DC (October 18, 2007). I was part of a roundtable discussion on detainee issues. The roundtable produced a pamphlet. I was listed as an "Observer" in the pamphlet: *The following individuals participated as observers in the workshop and the views expressed do not reflect the official policy or position of the Department of Defense, the Joint Staff, the Department of Army, the United States Marine Corps, the U.S. Coast Guard, the U.S. government, or the attorneys representing the litigants in these issues.*

FISA modernization Seminar, Georgetown University Law Center's National Security Center (September 10, 2007). I co-hosted this one-day seminar. No notes or transcript available.

Washington Post Editorial Board. I met with the members of this board to discuss FISA modernization (September 7, 2007). No notes or transcript available.

Federal Bar Council, New York. I spoke on a panel with David Kelley (former U.S. Attorney, SDNY) and Judge Keenan (former Judge of the FISC) (April 12, 2007). No notes or transcript available.

American University, Washington DC (March 19, 2007). I was part of a panel discussion on surveillance and other national security issues. No notes or transcript available.

ACS Convention (June 17, 2006). I was part of a panel discussion on surveillance. Audio available at <http://www.acslaw.org/node/3036>.

I spoke to the House Homeland Security Committee at its retreat held at the Wye River Plantation (March 2005). I gave an exegesis of the movie, *Day of the Jackal*. No notes or transcript available.

Kennedy School of Government, Fellows Program (October 3, 2004). I spoke at Vicki Divoll's class on national security. In 2007, I also spoke at Jim Baker's Fellows Program at the Kennedy School, and guest lectured at his class at Harvard Law School, but have not been able to verify the exact dates. No notes or transcript available.

ABA Program on White-Collar Crime, Lawyer or Snitch? The New Rules (March 4, 2004). I was part of a panel. No notes or transcript available.

ABA Program on the Foreign Intelligence Surveillance Act and the Courts: What the Recent Decision Means for Intelligence Intercepts (December 11, 2002). I was part of a panel. No notes or transcript available.

Katherine Shrader, *Bush Sees Legal Immunity for Telecoms*, Associated Press (August 31, 2007).

Tom Hamburger and Josh Meyer, *Loyalty to Bush, Cheney Shaped Policy and Advice*, Los Angeles Times (August 28, 2007).

Ellen Nakashima, *Telecom Firms Helped with Government's Warrantless Wiretaps*, Washington Post (August 24, 2007).

Matt Apuzzo, *Spy Court Gets New Home of Its Own*, Associated Press (August 21, 2007).

James Risen and Eric Lichtblau, *Concerns Raised on Wider Spying Under New Law*, New York Times (August 19, 2007).

Lead the Way, interview by Ethisphere Magazine regarding Time Warner's ethics and compliance program (date unknown but probably 2007).

Craig's Corner for Counsel: National Security, Metropolitan Corporate Counsel (July 2007).

I was interviewed by the producers of a PBS *Frontline* story on the NSA surveillance program in the summer of 2007, but was not part of the broadcast.

I discussed the post-September 11 environment with Eric Lichtblau in connection with his book, *Bush's Law*, and he sent me an e-mail based on that discussion on June 19, 2006. Similar material appears on pages 86-87 of the book.

Vanessa Blum, *Gonzales Mulls Need for Terror Reform*, Legal Times (June 3, 2005).

Eric Lichtblau, *A New Antiterror Agency is Considered*, New York Times (March 25, 2005).

National Public Radio, FBI Investigates Gorelick Death Threats (April 19, 2004). Audio available at <http://www.npr.org/templates/story/story.php?storyId=1842206>. I also recall speaking to ABC News on camera about this topic during this time period, but I could not find recordings of the interviews online; the gist of what I recall saying is consistent with views I later expressed in more detail in a law review article, *The Rise and Fall of the FISA Wall*, 17 Stan. L. & Policy Rev. 487 (2006), that is cited in part a, above.

National Public Radio, Secret Search Warrants (September 20, 2002). Audio available at <http://www.npr.org/templates/story/story.php?storyId=1150369>.

Since leaving government in May 2003, I have given briefings to members of the media on legal issues relating to national security, and also in connection with the publication of my book in August 2007, but these generally were not on the record and did not result in published accounts.

PART B - QUALIFICATIONS

14. QUALIFICATIONS (DESCRIBE WHY YOU BELIEVE YOU ARE QUALIFIED TO SERVE IN THE POSITION FOR WHICH YOU HAVE BEEN NOMINATED):

I have operational and legal expertise in both national security and criminal justice. My work at the Department of Justice before and after September 11, 2001 gave me real-world experience with issues in those areas. My scholarly work since then, including my writing, teaching, and public speaking, reflects an understanding of the law governing national security and criminal justice. I appreciate and understand the importance of liberty and security, as well as the tension that can sometimes arise between them. I have held high-level positions in the Clinton and Bush administrations, and received DOJ's highest award twice – once from Janet Reno, and once from John Ashcroft. I understand that my client is the United States. I have a reputation for honesty and integrity, and speaking truth to power. I am not afraid of disagreement, I recognize the difficulty of the issues to be faced, and I am able to admit my limits and mistakes when I make them. I try to be an honest broker and remain focused on the mission of protecting national security and civil liberties.

PART C - POLITICAL AND FOREIGN AFFILIATIONS

15. POLITICAL ACTIVITIES (LIST ANY MEMBERSHIPS OR OFFICES HELD IN OR FINANCIAL CONTRIBUTIONS OR SERVICES RENDERED TO, ANY POLITICAL PARTY, ELECTION COMMITTEE, POLITICAL ACTION COMMITTEE, OR INDIVIDUAL CANDIDATE DURING THE LAST TEN YEARS):

I have not held political office. I was an advisor to the campaigns of Senator Barack Obama and Senator Hillary Clinton in 2008, and I donated \$2300 to Senator Clinton and \$4600 to Senator Obama; I raised approximately \$25,000 for Senator Obama. I worked on the President-Elect's Transition Team.

16. CANDIDACY FOR PUBLIC OFFICE (FURNISH DETAILS OF ANY CANDIDACY FOR ELECTIVE PUBLIC OFFICE):

N/A

17. FOREIGN AFFILIATIONS

(NOTE: QUESTIONS 17A AND B ARE NOT LIMITED TO RELATIONSHIPS REQUIRING REGISTRATION UNDER THE FOREIGN AGENTS REGISTRATION ACT. QUESTIONS 17A, B, AND C DO NOT CALL FOR A POSITIVE RESPONSE IF THE REPRESENTATION OR TRANSACTION WAS AUTHORIZED BY THE UNITED STATES GOVERNMENT IN CONNECTION WITH YOUR OR YOUR SPOUSE'S EMPLOYMENT IN GOVERNMENT SERVICE.)

- A. HAVE YOU OR YOUR SPOUSE EVER REPRESENTED IN ANY CAPACITY (E.G. EMPLOYEE, ATTORNEY, OR POLITICAL/BUSINESS CONSULTANT), WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

My wife, an attorney at WilmerHale, represented the following foreign entities that have some connection to foreign governments, but may not be foreign governments:

National Council of Resistance of Iran. See *National Council of Resistance of Iran v. Department of State*, 251 F.3d 192 (D.C. Cir. 2001).

People's Mojahedin Organization of Iran . See *People's Mojahedin Organization of Iran v. Department of State*, cert. denied, 529 U.S. 1104 (2000).

The Republic of Honduras. See *McNab v. United States*, 540 U.S. 1177 (2004).

The Ministry of Finance of the Republic of Indonesia. See *Ministry of Finance of Republic of Indonesia v. Karaha Bodas Co.*, certiorari denied, 539 U.S. 904 (2003).

Emirates, which is a government-owned airline, in connection with various third-party subpoenas served on the airline in the United States.

B. HAVE ANY OF YOUR OR YOUR SPOUSE'S ASSOCIATES REPRESENTED, IN ANY CAPACITY, WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

My wife has worked at three law firms: Miller, Cassidy, Larocca & Lewin; Baker Botts; and WilmerHale. These law firms may have represented many foreign government entities. It would be extremely difficult, if not impossible, to catalog all of those representations. According to online records, Baker Botts was registered under FARA between September 15, 1989, and September 30, 2003 (while my wife was at the firm); and WilmerHale was registered under FARA between April 8, 1982, and April 8, 1996 (before my wife joined the firm).

C. DURING THE PAST TEN YEARS, HAVE YOU OR YOUR SPOUSE RECEIVED ANY COMPENSATION FROM, OR BEEN INVOLVED IN ANY FINANCIAL OR BUSINESS TRANSACTIONS WITH, A FOREIGN GOVERNMENT OR ANY ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

Not to my knowledge, apart from possible foreign government ownership or control of securities in foreign companies as shown on the attached SF-278. The clients represented by my wife, described above, paid to her law firm, which in turn paid her.

D. HAVE YOU OR YOUR SPOUSE EVER REGISTERED UNDER THE FOREIGN AGENTS REGISTRATION ACT? IF SO, PLEASE PROVIDE DETAILS.

No.

18. DESCRIBE ANY LOBBYING ACTIVITY DURING THE PAST TEN YEARS, OTHER THAN IN AN OFFICIAL U.S. GOVERNMENT CAPACITY, IN WHICH YOU OR YOUR SPOUSE HAVE ENGAGED FOR THE PURPOSE OF DIRECTLY OR INDIRECTLY INFLUENCING THE PASSAGE, DEFEAT, OR MODIFICATION OF FEDERAL LEGISLATION, OR FOR THE PURPOSE OF AFFECTING THE ADMINISTRATION AND EXECUTION OF FEDERAL LAW OR PUBLIC POLICY.

None. I have, of course, testified before and briefed members of Congress and staff on certain legislation since leaving government, as described in question 13 above, but this was in my individual capacity, not as a lobbyist.

PART D - FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

19. DESCRIBE ANY EMPLOYMENT, BUSINESS RELATIONSHIP, FINANCIAL TRANSACTION, INVESTMENT, ASSOCIATION, OR ACTIVITY (INCLUDING, BUT NOT LIMITED TO, DEALINGS WITH THE FEDERAL GOVERNMENT ON YOUR OWN BEHALF OR ON BEHALF OF A CLIENT),

WHICH COULD CREATE, OR APPEAR TO CREATE, A CONFLICT OF INTEREST IN THE POSITION TO WHICH YOU HAVE BEEN NOMINATED.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

20. DO YOU INTEND TO SEVER ALL BUSINESS CONNECTIONS WITH YOUR PRESENT EMPLOYERS, FIRMS, BUSINESS ASSOCIATES AND/OR PARTNERSHIPS, OR OTHER ORGANIZATIONS IN THE EVENT THAT YOU ARE CONFIRMED BY THE SENATE? IF NOT, PLEASE EXPLAIN.

Yes, according to the terms of the ethics agreement I have entered into with the Department of Justice's ethics official.

21. DESCRIBE THE FINANCIAL ARRANGEMENTS YOU HAVE MADE OR PLAN TO MAKE, IF YOU ARE CONFIRMED, IN CONNECTION WITH SEVERANCE FROM YOUR CURRENT POSITION. PLEASE INCLUDE SEVERANCE PAY, PENSION RIGHTS, STOCK OPTIONS, DEFERRED INCOME ARRANGEMENTS, AND ANY AND ALL COMPENSATION THAT WILL OR MIGHT BE RECEIVED IN THE FUTURE AS A RESULT OF YOUR CURRENT BUSINESS OR PROFESSIONAL RELATIONSHIPS.

Please see attached SF-278

22. DO YOU HAVE ANY PLANS, COMMITMENTS, OR AGREEMENTS TO PURSUE OUTSIDE EMPLOYMENT, WITH OR WITHOUT COMPENSATION, DURING YOUR SERVICE WITH THE GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

I do not currently have any plans, commitments or agreements to pursue outside employment; I have, however, offered to provide uncompensated assistance, consistent with my responsibilities to the Department, to Ken Weinstein, with whom I currently teach a class at Georgetown Law School.

23. AS FAR AS CAN BE FORESEEN, STATE YOUR PLANS AFTER COMPLETING GOVERNMENT SERVICE. PLEASE SPECIFICALLY DESCRIBE ANY AGREEMENTS OR UNDERSTANDINGS, WRITTEN OR UNWRITTEN, CONCERNING EMPLOYMENT AFTER LEAVING GOVERNMENT SERVICE. IN PARTICULAR, DESCRIBE ANY AGREEMENTS, UNDERSTANDINGS, OR OPTIONS TO RETURN TO YOUR CURRENT POSITION.

None.

24. IF YOU ARE PRESENTLY IN GOVERNMENT SERVICE, DURING THE PAST FIVE YEARS OF SUCH SERVICE, HAVE YOU RECEIVED FROM A PERSON OUTSIDE OF GOVERNMENT AN OFFER OR EXPRESSION OF INTEREST TO EMPLOY YOUR SERVICES AFTER YOU LEAVE GOVERNMENT SERVICE? IF YES, PLEASE PROVIDE DETAILS.

N/A

25. IS YOUR SPOUSE EMPLOYED? IF YES AND THE NATURE OF THIS EMPLOYMENT IS RELATED IN ANY WAY TO THE POSITION FOR WHICH YOU ARE SEEKING CONFIRMATION, PLEASE INDICATE YOUR SPOUSE'S EMPLOYER, THE POSITION, AND THE LENGTH OF TIME THE POSITION HAS BEEN HELD. IF YOUR SPOUSE'S EMPLOYMENT IS NOT RELATED TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED, PLEASE SO STATE.

My spouse is a partner at Wilmer, Cutler, Pickering, Hale & Dorr LLP, 1875 Pennsylvania Ave., N.W., Washington, D.C. 20006. She has been at WilmerHale since September 2002.

26. LIST BELOW ALL CORPORATIONS, PARTNERSHIPS, FOUNDATIONS, TRUSTS, OR OTHER ENTITIES TOWARD WHICH YOU OR YOUR SPOUSE HAVE FIDUCIARY OBLIGATIONS OR IN WHICH YOU OR YOUR SPOUSE HAVE HELD DIRECTORSHIPS OR OTHER POSITIONS OF TRUST DURING THE PAST FIVE YEARS.

<u>NAME OF ENTITY</u>	<u>POSITION</u>	<u>DATES HELD</u>	<u>SELF OR SPOUSE</u>
Time Warner	SVP and DGC	February 2006-present	self
Time Warner	Chief Compliance Officer	November 2005-present	self
Time Warner	VP	June 2003-November 2005	self
WilmerHale	Partner	January 2005-present	spouse
Baker Botts	Partner	January 2001-July 2002	spouse

We also serve as trustees or beneficiaries of various family financial trusts, none of them public trusts.

27. LIST ALL GIFTS EXCEEDING \$100 IN VALUE RECEIVED DURING THE PAST FIVE YEARS BY YOU, YOUR SPOUSE, OR YOUR DEPENDENTS. (NOTE: GIFTS RECEIVED FROM RELATIVES AND GIFTS GIVEN TO YOUR SPOUSE OR DEPENDENT NEED NOT BE INCLUDED UNLESS THE GIFT WAS GIVEN WITH YOUR KNOWLEDGE AND ACQUIESCENCE AND YOU HAD REASON TO BELIEVE THE GIFT WAS GIVEN BECAUSE OF YOUR OFFICIAL POSITION.)

I have received various gifts from outside counsel to Time Warner, in keeping with Time Warner's Standards of Business Conduct (which generally permits gifts from a single source of up to \$500 in any 12-month period). In particular, I received gifts in May 2004 when my daughter was born. I cannot recall the specifics of the gifts; some of them may have exceeded \$100; none exceeded \$500.

28. LIST ALL SECURITIES, REAL PROPERTY, PARTNERSHIP INTERESTS, OR OTHER INVESTMENTS OR RECEIVABLES WITH A CURRENT MARKET VALUE (OR, IF MARKET VALUE IS NOT ASCERTAINABLE, ESTIMATED CURRENT FAIR VALUE) IN EXCESS OF \$1,000. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE A OF THE DISCLOSURE FORMS OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CURRENT VALUATIONS ARE USED.)

<u>DESCRIPTION OF PROPERTY</u>	<u>VALUE</u>	<u>METHOD OF VALUATION</u>
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See attached SF-278

29. LIST ALL LOANS OR OTHER INDEBTEDNESS (INCLUDING ANY CONTINGENT LIABILITIES) IN EXCESS OF \$10,000. EXCLUDE A MORTGAGE ON YOUR PERSONAL RESIDENCE UNLESS IT IS RENTED OUT, AND LOANS SECURED BY AUTOMOBILES, HOUSEHOLD FURNITURE, OR

APPLIANCES. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE C OF THE DISCLOSURE FORM OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CONTINGENT LIABILITIES ARE ALSO INCLUDED.)

<u>NATURE OF OBLIGATION</u>	<u>NAME OF OBLIGEE</u>	<u>AMOUNT</u>
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See attached SF-278

30. ARE YOU OR YOUR SPOUSE NOW IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION? HAVE YOU OR YOUR SPOUSE BEEN IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION IN THE PAST TEN YEARS? HAVE YOU OR YOUR SPOUSE EVER BEEN REFUSED CREDIT OR HAD A LOAN APPLICATION DENIED? IF THE ANSWER TO ANY OF THESE QUESTIONS IS YES, PLEASE PROVIDE DETAILS.

No.

31. LIST THE SPECIFIC SOURCES AND AMOUNTS OF ALL INCOME RECEIVED DURING THE LAST FIVE YEARS, INCLUDING ALL SALARIES, FEES, DIVIDENDS, INTEREST, GIFTS, RENTS, ROYALTIES, PATENTS, HONORARIA, AND OTHER ITEMS EXCEEDING \$200. (COPIES OF U.S. INCOME TAX RETURNS FOR THESE YEARS MAY BE SUBSTITUTED HERE, BUT THEIR SUBMISSION IS NOT REQUIRED.)

David Kris Income-5 Years

[REDACTED]

<u>Source</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>	<u>2004</u>
Taxable Wages					
Dividend					
Interest					
Honoraria					
Gifts					
Fee					
Royalties					
Capital Gains					

Notes:

These amounts are provided on a tax basis

Interest income may exclude amounts of less than \$10 per year per institution

Dividends in some cases may have been reduced by trust expenses. Mr Kris is beneficiary of a trust which reports taxable dividends which is gross dividends reduced by trust expenses.

Income reported is for nominee only and excludes spouse and trusts for children.

Capital gains are shown as net capital gain and does reflect the gross proceeds.

Taxable wages are reflected as reported on W-2 form for 2004-2007. However, the amount shown as 2008 is from the final paystub as the actual W-2 is not available at this moment. There could be some difference in the W-2 amount for 2008 from the paystub.

Royalties and fees, like other items, are reported on a cash basis. In some cases the work was performed in the year prior to receipt.

32. IF ASKED, WILL YOU PROVIDE THE COMMITTEE WITH COPIES OF YOUR AND YOUR SPOUSE'S FEDERAL INCOME TAX RETURNS FOR THE PAST THREE YEARS?

Yes.

33. LIST ALL JURISDICTIONS IN WHICH YOU AND YOUR SPOUSE FILE ANNUAL INCOME TAX RETURNS.

Federal, Maryland, New York. My wife's law firm also files returns in many states and foreign countries where it maintains offices.

34. HAVE YOUR FEDERAL OR STATE TAX RETURNS BEEN THE SUBJECT OF AN AUDIT, INVESTIGATION, OR INQUIRY AT ANY TIME? IF SO, PLEASE PROVIDE DETAILS, INCLUDING THE RESULT OF ANY SUCH PROCEEDING.

No.

35. IF YOU ARE AN ATTORNEY, ACCOUNTANT, OR OTHER PROFESSIONAL, PLEASE LIST ALL CLIENTS AND CUSTOMERS WHOM YOU BILLED MORE THAN \$200 WORTH OF SERVICES DURING THE PAST FIVE YEARS. ALSO, LIST ALL JURISDICTIONS IN WHICH YOU ARE LICENSED TO PRACTICE.

I am licensed to practice in Massachusetts, New York, and Maryland. I have had two clients: The United States, and Time Warner.

36. DO YOU INTEND TO PLACE YOUR FINANCIAL HOLDINGS AND THOSE OF YOUR SPOUSE AND DEPENDENT MEMBERS OF YOUR IMMEDIATE HOUSEHOLD IN A BLIND TRUST? IF YES, PLEASE FURNISH DETAILS. IF NO, DESCRIBE OTHER ARRANGEMENTS FOR AVOIDING ANY POTENTIAL CONFLICTS OF INTEREST.

No, I do not intend to place my financial holdings and/or those of my spouse and dependent members of my immediate household in a blind trust. To avoid any potential conflicts of interest, I will follow governing rules concerning conflicts of interest and, if confirmed, will be guided by the determinations of ethics professionals at the

Department of Justice. With respect to matters for which I know conflicts exist, I would inform relevant personnel that I am recused from such matters. As future matters arise, if I become aware that a potential conflict exists, I would consult with DOJ ethics professionals to determine the appropriate action and will be guided by their determinations.

36. IF APPLICABLE, ATTACH THE LAST THREE YEARS OF ANNUAL FINANCIAL DISCLOSURE FORMS YOU HAVE BEEN REQUIRED TO FILE WITH YOUR AGENCY, DEPARTMENT, OR BRANCH OF GOVERNMENT.

N/A. See attached current SF-278.

PART E - ETHICAL MATTERS

38. HAVE YOU EVER BEEN THE SUBJECT OF A DISCIPLINARY PROCEEDING OR CITED FOR A BREACH OF ETHICS OR UNPROFESSIONAL CONDUCT BY, OR BEEN THE SUBJECT OF A COMPLAINT TO, ANY COURT, ADMINISTRATIVE AGENCY, PROFESSIONAL ASSOCIATION, DISCIPLINARY COMMITTEE, OR OTHER PROFESSIONAL GROUP? IF SO, PROVIDE DETAILS.

No.

39. HAVE YOU EVER BEEN INVESTIGATED, HELD, ARRESTED, OR CHARGED BY ANY FEDERAL, STATE, OR OTHER LAW ENFORCEMENT AUTHORITY FOR VIOLATION OF ANY FEDERAL STATE, COUNTY, OR MUNICIPAL LAW, REGULATION, OR ORDINANCE, OTHER THAN A MINOR TRAFFIC OFFENSE, OR NAMED AS A DEFENDANT OR OTHERWISE IN ANY INDICTMENT OR INFORMATION RELATING TO SUCH VIOLATION? IF SO, PROVIDE DETAILS.

No.

40. HAVE YOU EVER BEEN CONVICTED OF OR ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO ANY CRIMINAL VIOLATION OTHER THAN A MINOR TRAFFIC OFFENSE? IF SO, PROVIDE DETAILS.

No.

41. ARE YOU PRESENTLY OR HAVE YOU EVER BEEN A PARTY IN INTEREST IN ANY ADMINISTRATIVE AGENCY PROCEEDING OR CIVIL LITIGATION? IF SO, PLEASE PROVIDE DETAILS.

I was at one point a member of the class in the DOJ class-action overtime lawsuit.

42. HAVE YOU BEEN INTERVIEWED OR ASKED TO SUPPLY ANY INFORMATION AS A WITNESS OR OTHERWISE IN CONNECTION WITH ANY CONGRESSIONAL INVESTIGATION, FEDERAL, OR STATE AGENCY PROCEEDING, GRAND JURY INVESTIGATION, OR CRIMINAL OR CIVIL LITIGATION IN THE PAST TEN YEARS? IF SO, PROVIDE DETAILS.

Please see my letter to the Chairman and Vice Chairman on this matter.

43. HAS ANY BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, DIRECTOR, OR PARTNER BEEN A PARTY TO ANY ADMINISTRATIVE AGENCY PROCEEDING OR CRIMINAL OR CIVIL LITIGATION RELEVANT TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED? IF SO,

PROVIDE DETAILS. (WITH RESPECT TO A BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, YOU NEED ONLY CONSIDER PROCEEDINGS AND LITIGATION THAT OCCURRED WHILE YOU WERE AN OFFICER OF THAT BUSINESS.)

Time Warner has been involved in civil and other litigation or investigations, but as far as I know none of it relates to the position for which I have been nominated. As far as I know, Time Warner was not involved in the TSP and is not a defendant in any TSP-related lawsuits.

44. HAVE YOU EVER BEEN THE SUBJECT OF ANY INSPECTOR GENERAL INVESTIGATION? IF SO, PROVIDE DETAILS.

No

PART F - SECURITY INFORMATION

45. HAVE YOU EVER BEEN DENIED ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION FOR ANY REASON? IF YES, PLEASE EXPLAIN IN DETAIL.

No

46. HAVE YOU BEEN REQUIRED TO TAKE A POLYGRAPH EXAMINATION FOR ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION? IF YES, PLEASE EXPLAIN.

No

47. HAVE YOU EVER REFUSED TO SUBMIT TO A POLYGRAPH EXAMINATION? IF YES, PLEASE EXPLAIN.

No

PART G - ADDITIONAL INFORMATION

48. DESCRIBE IN YOUR OWN WORDS THE CONCEPT OF CONGRESSIONAL OVERSIGHT OF U.S. INTELLIGENCE ACTIVITIES. IN PARTICULAR, CHARACTERIZE WHAT YOU BELIEVE TO BE THE OBLIGATIONS OF THE ASSISTANT ATTORNEY GENERAL FOR NATIONAL SECURITY AND THE INTELLIGENCE COMMITTEES OF THE CONGRESS RESPECTIVELY IN THE OVERSIGHT PROCESS.

I believe in appropriate oversight, and in strong, cooperative relationships between the Department of Justice and the Intelligence and Judiciary Committees.

49. EXPLAIN YOUR UNDERSTANDING OF THE RESPONSIBILITIES OF THE ASSISTANT ATTORNEY GENERAL FOR NATIONAL SECURITY.

The Assistant Attorney General (AAG) for National Security serves as the head of the National Security Division (NSD) of the Department of Justice, is the Department of Justice's primary liaison to the Director of National Intelligence, and performs such other duties as the Attorney General shall prescribe. 28 U.S.C. § 507A(b).

If designated, the AAG is within the definition of “Attorney General” under FISA, 50 U.S.C. § 1801(g), and can therefore approve FISA applications and perform other functions under the statute. The AAG has similar approval authority under the criminal wiretapping statute, 18 U.S.C. § 2516(1). The AAG is obligated to provide certain classified briefings under Section 9A of CIPA, and has a role in establishing policies and procedures to assist the Attorney General in the consideration of intelligence and national security-related equities in the development of charging documents and related pleadings in espionage prosecutions. Pub. L. 108-177, Title III, § 341(b) (2003), as amended. If designated, the AAG also has a role in certain undercover operations pursuant to Pub. L. 102-395, Title I, § 102(b) (1992), as amended. The AAG is part of the “Federal law enforcement community” under 42 U.S.C. § 10502(2)(L). Other responsibilities of the AAG for National Security, and the National Security Division, are set out in 28 C.F.R. § 0.72.

Subject to direction from the Attorney General, the Assistant Attorney General should help the National Security Division fulfill the promise of its potential in at least four important ways. First, he or she should bring together NSD’s constituent parts, ensuring coordination and establishing rigorous decision-making and information-sharing processes within the Division. This will foster coherent operations and policy development within the Department of Justice (DOJ), and also establish a distinct DOJ national security culture. The AAG should encourage synergies between NSD’s criminal and intelligence lawyers.

Second, the Assistant Attorney General should work to develop NSD’s relationships with the U.S. Intelligence Community and the National Security Council. NSD should participate on behalf of DOJ in the inter-agency process, in keeping with the Attorney General’s status as a permanent member of the NSC, and should help encourage adherence to the rule of law in intelligence matters. The Assistant Attorney General should help NSD develop and maintain good relationships with its oversight committees in Congress.

Third, the Assistant Attorney General should help NSD work effectively with the FBI, in specified areas (e.g., FISAs and criminal prosecutions), in conducting oversight, and in developing a true operational partnership in intelligence programs and individual threats and investigations. This should help the FBI continue its transformation into a security service, and also enhance protections for civil liberties by adding real-time involvement by NSD lawyers.


Fourth and finally, the Assistant Attorney General should work to implement, review, and improve the laws, regulations, institutions, and policies that shape the way in which the Department of Justice carries out its national security role. This includes, for example, the FISA Amendments Act, Executive Order 12333, and the FBI Domestic Operations Guidelines.

AFFIRMATION

I, David Kris, DO SWEAR THAT THE ANSWERS I HAVE
PROVIDED TO THIS QUESTIONNAIRE ARE ACCURATE AND COMPLETE.

3-9-09
(Date)


(Name)


(Notary)
Rhodora N. Woolner
Notary Public for the District of Columbia
My commission Expires: April 30, 2010

TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

In connection with my nomination to be Assistant Attorney General for National Security, I hereby express my willingness to respond to requests to appear and testify before any duly constituted committee of the Senate.

Signature

Date: 3-9-09



United States
Office of Government Ethics
 1201 New York Avenue, NW., Suite 500
 Washington, DC 20005-3917

March 6, 2009

The Honorable Dianne Feinstein
 Chairwoman
 Select Committee on Intelligence
 United States Senate
 Washington, DC 20510-6475

Dear Madam Chairwoman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by David S. Kris, who has been nominated by President Obama for the position of Assistant Attorney General for the National Security Division, Department of Justice.

We have reviewed the report and have also obtained advice from the Department of Justice concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated February 10, 2009, from the agency's ethics official, outlining the steps Mr. Kris will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with any action he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Kris is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Robert I. Cusick
 Director

Enclosures



U.S. Department of Justice
Justice Management Division
Departmental Ethics Office

FEB 10 2009

Washington, D.C. 20530

Mr. Robert Cusick
Director
Office of Government Ethics
1201 New York Avenue, NW
Suite 500
Washington, DC 20005-3919

Dear Mr. Cusick:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of David S. Kris. President Obama has announced his intent to nominate Mr. Kris to serve as the Assistant Attorney General for the National Security Division, Department of Justice.

We have conducted a thorough review of the enclosed report. The conflict of interest statute, 18 U.S.C. § 208, requires that Mr. Kris recuse himself from participating personally and substantially in any particular matter that has a direct and predictable effect on his financial interests or the financial interests of any other person whose interests are imputed to him, unless he first obtains a written waiver, pursuant to Section 208(b)(1), or qualifies for a regulatory exemption, pursuant to Section 208(b)(2). Mr. Kris understands that the interests of the following persons are imputed to him: his spouse; minor children; any general partner; any organization in which he serves as an officer, director, trustee, general partner or employee; and any person or organization with which he is negotiating or has an arrangement concerning prospective employment. In determining whether a particular matter has a direct and predictable effect on his financial interests or on those of any other person whose interests are imputed to him, Mr. Kris will consult with Department of Justice ethics officials.

We have advised Mr. Kris that the duties of the Assistant Attorney General may involve particular matters affecting the financial interests of the following entities in which he holds stock, either directly or through a trust: General Electric Corp., Verizon, Microsoft Corp., and Nokia Corp. Mr. Kris will divest his interests in these entities within 90 days of his confirmation. Mr. Kris understands that he may be eligible to request a Certificate of Divestiture for the assets that will be divested and that a Certificate of Divestiture is effective only if obtained prior to divestiture. Regardless of whether he receives a Certificate of Divestiture, he will divest these assets within 90 days of his confirmation and will invest the proceeds in non-conflicting assets. With regard to the entities to be divested, he will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interest of the entity until he and the trust have divested it, unless he first obtains a written

Mr. Robert Cusick

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waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

Mr. Kris will resign from Time Warner Inc. ("Time Warner") upon confirmation as Assistant Attorney General. Pursuant to the terms of his employment contract, Mr. Kris will receive a lump sum payment of bonus allocated for services performed through December 31, 2008. Mr. Kris will continue to be a deferred vested participant in the Time Warner Pension Plan, but neither he nor the corporation will make additional contributions to this defined benefit pension plan on his behalf. In addition, Mr. Kris will receive an excess benefit pension from the Time Warner Excess Benefit Pension Plan in a lump sum distribution, on the first day of the month following a period of six full calendar months following the date of his separation from service.

Accordingly, Mr. Kris will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of Time Warner to meet its obligations to him under the defined benefit plans, unless he first obtains a written waiver pursuant to 18 U.S.C. § 208(b)(1). Upon confirmation, Mr. Kris will request a lump sum distribution of the funds in his 401K retirement plan to rollover into an IRA. Mr. Kris understands and agrees that as long as he holds Time Warner stock or vested stock options, he will not participate personally and substantially in any particular matter that has a direct and predictable effect on Time Warner unless he first obtains a written waiver, pursuant to Section 208(b)(1), or qualifies for a regulatory exemption, pursuant to Section 208(b)(2).

Mr. Kris receives royalties from Thomson West publishers for sales of *National Security Investigations and Prosecutions*, a book he co-authored. Mr. Kris will not participate personally in any particular matter that has a direct and predictable effect on the ability or willingness of Thomson West Publishing to honor its contractual obligations regarding the royalties, unless he first receives a written waiver pursuant to 18 U.S.C. § 208(b)(1). If Mr. Kris makes contributions, edits or revisions to the book, he may not receive any compensation, including royalties, for future editions of the book that incorporate contributions, edits or revisions that he makes during his appointment as Assistant Attorney General. Alternatively, Mr. Kris may arrange with an individual to undertake the preparation of any new editions of the book during his government service. He understands and agrees that, if he enters into such an arrangement, he may have some general discussions with this individual on topics relevant to the book but may not provide any specific, substantive input regarding this individual's work on the book during his government service. In either case, Mr. Kris has advised Thomson West to make no use of his official title or position in connection with the book and any related materials or any promotional efforts.

We have advised Mr. Kris that because of the standard of conduct on impartiality at 5 C.F.R. § 2635.502, he should seek advice before participating in any particular matter involving specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party. For a period of one year after his resignation from Time Warner, he also will not participate personally and

Mr. Robert Cusick

Page 3

substantially in any particular matter involving specific parties in which that entity is a party or represents a party, unless he is first authorized to participate pursuant to 5 C.F.R. § 2635.502(d).

Mr. Kris's spouse is a partner in the law firm Wilmer Cutler Pickering Hale and Dorr, LLP ("WilmerHale"). Mr. Kris will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of WilmerHale, unless he first obtains a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). Mr. Kris also has a covered relationship with his spouse's clients. He will not participate personally and substantially in any particular matter involving specific parties in which any client of his spouse's is a party or represents a party, unless he is first authorized to participate pursuant to 5 C.F.R. § 2635.502(d).

Upon confirmation as Assistant Attorney General, Mr. Kris will resign from his positions with the Brookings Institution and Georgetown Law School. For a period of one year after his resignations from the organizations, he will not participate personally and substantially in any particular matter involving specific parties in which the Brookings Institution or Georgetown Law School is a party or represents a party, unless he is first authorized to participate pursuant to 5 C.F.R. § 2635.502(d). Upon confirmation as Assistant Attorney General, Mr. Kris will resign from his positions as Trustee of the Kris Irrevocable Trust and Kris Realty Trust.

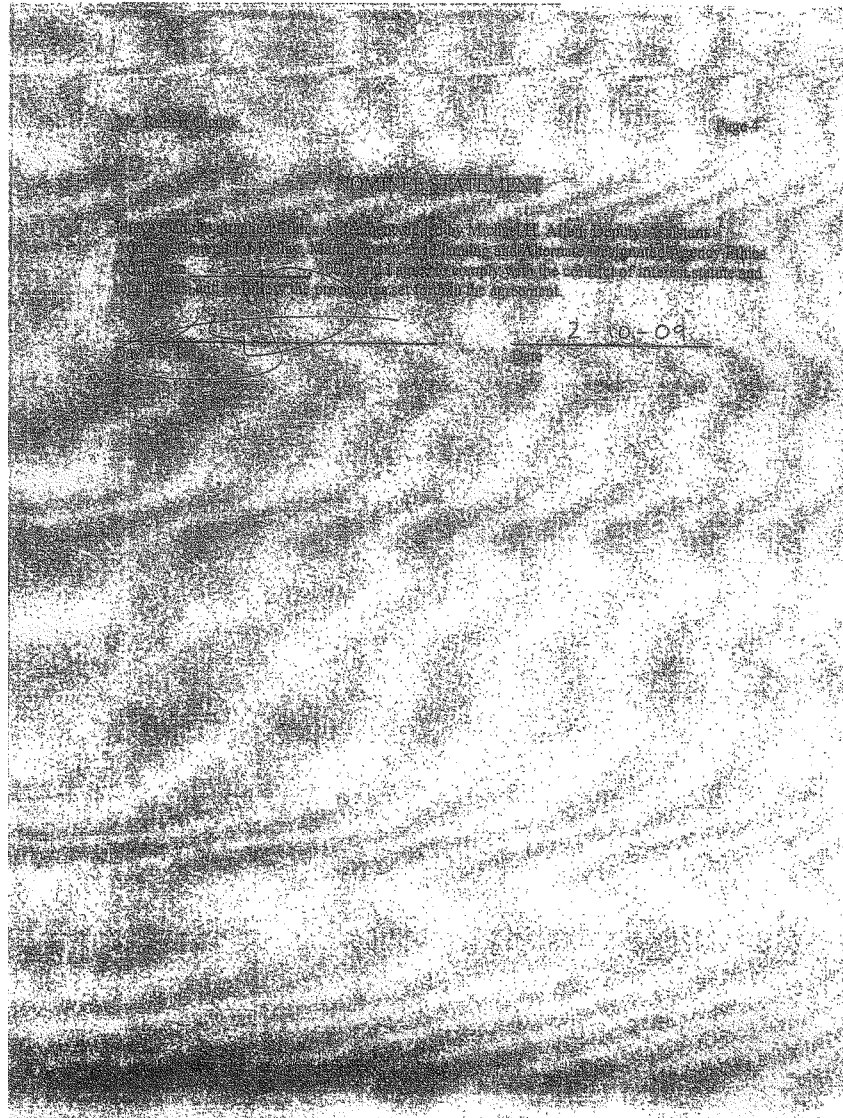
Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,



Michael H. Allen
Deputy Assistant Attorney General
Policy, Management, and Planning and
Alternate Designated Agency Ethics Official

Enclosure



SE 728 (Rev. 02/2000)
 5 C.F.R. Part 2634
 U.S. Office of Government Ethics
 Reporting Individual's Name

SCHEDULE A continued
 (Use only if needed)

Page Number
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Assets and Income

BLOCK A

None ☐

Valuation of Assets
 at close of reporting period

BLOCK B

None (or less than \$1,000)	
\$1,001 - \$15,000	
\$15,001 - \$50,000	
\$50,001 - \$100,000	
\$100,001 - \$250,000	
\$250,001 - \$500,000	
\$500,001 - \$1,000,000	
\$1,000,001 - \$5,000,000	
\$5,000,001 - \$25,000,000	
\$25,000,001 - \$50,000,000	
\$50,000,001 - \$250,000,000	
\$250,000,001 - \$500,000,000	
Over \$500,000,000	

Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.

BLOCK C

Type	Amount	Date (Mo., Day, Yr.) Only if Homosex
Dividends	None (or less than \$201)	
Interest	\$1,001 - \$2,500	
Interest	\$2,501 - \$5,000	
Interest	\$5,001 - \$15,000	
Interest	\$15,001 - \$50,000	
Interest	\$50,001 - \$100,000	
Interest	\$100,001 - \$1,000,000	
Interest	Over \$1,000,000	
Other Income (Specify Type & Amount)		

1	General Electric Co - Kathryn Kris Trust	None	None	None	None
2	Home Depot Inc - Kathryn Kris Trust				
3	Intel Corp - Kathryn Kris Trust				
4	Johnson & Johnson - Kathryn Kris Trust				
5	Johnson Controls Inc - Kathryn Kris Trust				
6	Linear Technology Corp - Kathryn Kris Trust				
7	Microsoft Corp - Kathryn Kris Trust				
8	Newell Rubbermaid Inc - Kathryn Kris Trust				
9	Noble Corp - Kathryn Kris Trust				

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, track the other, higher categories of value, as appropriate.

Prior Editions Cannot be Used

SE 778 (Rev. 02/2009)
 5 C.F.R. Part 2634
 U.S. Office of Government Ethics
 Reporting Individual's Name

SCHEDULE A continued
 (Use only if needed)

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Assets and Income
 BLOCK A

Valuation of Assets
 at close of reporting period
 BLOCK B

Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.
 BLOCK C

	BLOCK B										BLOCK C		Date (Mo, Day, Yr) Only if Honorary
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	Over \$25,000,000	Type	Amount	
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													

Note: Every applicant who has asset income is solely that of the filer's spouse or dependent children. If the asset income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Print Entries Cannot be Used.

SP2019 (Rev. 10/2009)
4 C.F.R. Part 2014
U.S. Office of Governmental Ethics
Reporting Individual's Name

SCHEDULE A continued
(Use only if needed)

Page Number
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Assets and Income

BLOCK A

None ☐ Federal Home Loan Bank Bond
Issued 5/1/04 & 25% 5/11/2009-2005 -
Joint

Hugobon Royalty Trust (HRT) - Joint

Anays Inc - Joint

Bank of America - Joint

Barrick Gold Corp - Joint

BP PLC Sponsored ADR - Joint

Brookline Bancorp Inc - Joint

Carmax Inc - Joint

Carnival Corp (Carnival Cruise Lines)
Carnival Cruise Lines (CCL) - Joint

Valuation of Assets at close of reporting period

BLOCK B

None (or less than \$1,000)	
\$1,001 - \$15,000	
\$15,001 - \$50,000	
\$50,001 - \$100,000	
\$100,001 - \$250,000	
\$250,001 - \$500,000	
\$500,001 - \$1,000,000	
\$1,000,001 - \$5,000,000	
\$5,000,001 - \$25,000,000	
\$25,000,001 - \$50,000,000	
Over \$50,000,000	
Excepted Investment Fund	
Qualified Trust	

Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.

BLOCK C

Type	Amount	Date (Mo., Day, Yr.) Only if Honoraria
Dividends		
Rents and Royalties		
Interest		
Capital Gains		
None (or less than \$201)		
\$201 - \$1,000		
\$1,001 - \$2,500		
\$2,501 - \$5,000		
\$5,001 - \$15,000		
\$15,001 - \$50,000		
\$50,001 - \$100,000		
\$100,001 - \$1,000,000		
Over \$1,000,000		
Other Income (Specify Source and Amount)		

* This category applies only if the net income is such that of this item's spouse or dependent children. If the net income is either that of the item or jointly held by the item with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used

Reporting Individual
David S. Kris

David S. Kris

Page Number 7 of 23

[illegible]

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher category.

SCHEDULE A continued
(Use only if needed)

David S. Krlis

Figure Number

2 of 23

Assets and Income		BLOCK A		BLOCK B		BLOCK C	
Valuation of Assets at close of reporting period		BLOCK B		BLOCK C		BLOCK C	
Income type and amount. If None (or less than \$201)* is checked, no other entry is needed in Block C for that item.		BLOCK B		BLOCK C		BLOCK C	
Income type and amount. If None (or less than \$201)* is checked, no other entry is needed in Block C for that item.		BLOCK B		BLOCK C		BLOCK C	
1	None <input type="checkbox"/>	None (or less than \$1,001)	None (or less than \$1,001)	None (or less than \$201)	None (or less than \$201)	None (or less than \$201)	None (or less than \$201)
2	Ishares EAFE China	Over \$1,001 - \$15,000	Over \$1,001 - \$15,000	Over \$1,001 - \$15,000	Over \$1,001 - \$15,000	Over \$1,001 - \$15,000	Over \$1,001 - \$15,000
3	Ishares MSCI Canada Index Fund - Joint	\$15,001 - \$50,000	\$15,001 - \$50,000	\$15,001 - \$50,000	\$15,001 - \$50,000	\$15,001 - \$50,000	\$15,001 - \$50,000
4	Johnson & Johnson - Joint	\$50,001 - \$100,000	\$50,001 - \$100,000	\$50,001 - \$100,000	\$50,001 - \$100,000	\$50,001 - \$100,000	\$50,001 - \$100,000
5	Johnson Controls Inc - Joint	\$100,001 - \$250,000	\$100,001 - \$250,000	\$100,001 - \$250,000	\$100,001 - \$250,000	\$100,001 - \$250,000	\$100,001 - \$250,000
6	Life Time Fitness Inc - Joint	\$250,001 - \$500,000	\$250,001 - \$500,000	\$250,001 - \$500,000	\$250,001 - \$500,000	\$250,001 - \$500,000	\$250,001 - \$500,000
7	Linear Technology Corp - Joint	Over \$500,000	Over \$500,000	Over \$500,000	Over \$500,000	Over \$500,000	Over \$500,000
8	Manulife Financial Corp - Joint	Over \$500,000	Over \$500,000	Over \$500,000	Over \$500,000	Over \$500,000	Over \$500,000
9	Microsoft Corp - Joint	Over \$500,000	Over \$500,000	Over \$500,000	Over \$500,000	Over \$500,000	Over \$500,000
10	Moninger Inc - Joint	Over \$500,000	Over \$500,000	Over \$500,000	Over \$500,000	Over \$500,000	Over \$500,000

*This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, the filer should check the "Joint" box.

This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher category.

First Editions Cannot be Used.

SP-278 (Rev. 03/2009)
 U.S. Office of Government Ethics
 Reporting Individual's Name

SCHEDULE A continued
 (Use only if needed)

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Assets and Income

David S. Kirs

BLOCK A	BLOCK B Valuation of Assets at close of reporting period										BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.									
None <input type="checkbox"/>																				
1 Intel Corp - Joint																				
2 Newell Rubbermaid Inc - Joint																				
3 Noble Corp - Joint																				
4 Nokia Corp Sponsored ADR - Joint																				
5 Paychex Inc - Joint																				
6 Petrolis Brasileiro SA Petrobras Sponsored ADR - Joint																				
7 Pfizer - Joint																				
8 Praxair Inc - Joint																				
9 Royal Bank Scotland Group PLC Sponsored ADR (RBSXN) - Joint																				

* If the asset/income is solely that of the filer's spouse or dependent children, if the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other filer's name.

Print filer's name. Do not use.

SCHEDULE A continued
(Use only if needed)

David S. Krig

Page Number

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BLOCK A		BLOCK B							BLOCK C																	
Assets and Income		Valuation of Assets at close of reporting period							Income type and amount. If "None or less than \$201" is checked, no other entry is needed in Block C for that item.																	
		\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000 *	Excluded Investment Fund	Excluded Trust	Qualified Trust	Type	Amount										Other Income (Specify Type & Amount)	Date (Mo., Day, Yr.) Only if Homestead			
											Dividends	Tenant and Royalties	Interest	Capital Gain	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000 *	Over \$5,000,000		
1	Staples Inc - Joint	<input checked="" type="checkbox"/> None		X							X				X											
2	Stericycle Inc - Joint			X							X				X											
3	Suncor Energy Inc - Joint			X							X				X											
4	Suntech Power Holdings Co Ltd ADR - Joint			X							X				X											
5	Teva Pharmaceutical Industries LTD ADR - Joint			X							X				X											
6	Tractor Supply Co - Joint			X							X				X											
7	United Technologies Corp - Joint			X							X				X											
8	Unilever Health Group Inc - Joint			X							X				X											
9	Vanguard FTSE All-World Ex-US Index Fund (EIT) - Joint			X							X				X											

* Mark the other higher category.

Prior Editions Cannot be Used.

SF 278 (Rev. 07/2009)
 U.S. Office of Government Ethics
 Reporting Individual's Name

SCHEDULE A continued

(Use only if needed)

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Assets and Income

BLOCK A

None ☐

Valuation of Assets at close of reporting period

BLOCK B

None (or less than \$1,000)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000

Income: type and amount. If "None (or less than \$200)" is checked, no other entry is needed in Block C for that item.

BLOCK C

Type	Amount	Due Rec. Date (If Honorary)
Dividends	None (or less than \$200)	
Interest		
Capital Gains		
Other Income (Specify Type & Amount)		

1	VCA Anitech Inc - Joint	
2	Verizon Communications Inc - Joint	
3	Vertex Pharmaceuticals Inc - Joint	
4	Federated Money Market US Treasury Cash Reserves Institutional Shs (UTXX) Kris Minority Trust (DC#1)	
5	Abbott Laboratories - Kris Minority Trust (DC#1)	
6	Barrick Gold Corp - Kris Minority Trust (DC#1)	
7	Edwards Lifesciences Corp - Kris Minority Trust (DC#1)	
8	Expeditions International Washington Inc - Kris Minority Trust (DC#1)	
9	Genzyme Corp - Kris Minority Trust (DC#1)	
10	<p><small> This category applies only if the asset/income is solely that of the filer's spouse or dependent children. The asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, and the asset/income is not higher earnings. </small></p> <p><small>Prior Editions Cannot be Used.</small></p>	

42723 (Rev. 07/2009)
 3 C.F.R. Part 2634
 U.S. Office of Government Ethics
 Reporting Individual's Name

SCHEDULE A continued
 (Use only if needed)

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Assets and Income
 BLOCK A

None

Valuation of Assets
 at close of
 reporting period
 BLOCK B

Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.
 BLOCK C

	BLOCK B										BLOCK C		Due Date, Day, Jr., Out of Honoraria
	None (or less than \$1,000)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000	Over \$500,000,000	Over \$1,000,000,000	Over \$5,000,000,000	Over \$10,000,000,000	
1 Japan Smaller Capitalization Fund (JSCF) - Kris Minority Trust (DC#1)													
2 Microsoft Corp - Kris Minority Trust (DC#1)													
3 Newell Rubbermaid Inc - Kris Minority Trust (DC#1)													
4 Noble Corp - Kris Minority Trust (DC#1)													
5 Paychex Inc - Kris Minority Trust (DC#1)													
6 Staples Inc - Kris Minority Trust (DC#1)													
7 Suncor Energy - Kris Minority Trust (DC#1)													
8 Federated Money Market US Treasury Cash Reserves Institutional She (UTXX)-Kris Minority Trust (DC#2)													
9 Corporate Executive Board - Kris Minority Trust (DC#1)													

* This category applies only if the asset/income is solely that of the filer, spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher category.

Prior Editions Cannot be Used.

Supers (Rev. 04/2009)
 2009 Form 990
 U.S. Office of Government Ethics
 Reporting Individual's Name

SCHEDULE A continued
 (Use only if needed)

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David S. Kris

BLOCK A		BLOCK B Valuation of Assets at close of reporting period										BLOCK C Income: type and amount. If "None for less than \$201" is checked, no other entry is needed in Block C for that item.										BLOCK D Other Income (Specify Type & Amount)		BLOCK E Date (Mo, Day, Yr.) One if Honorary								
None <input type="checkbox"/>		\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000	Over \$500,000	\$250,000.001 - \$500,000.000	Over \$500,000.000	Accepted Investment Fund	Qualified Trust	Dividends	Interest	Capital Gains	None (or less than \$201)	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000	Over \$5,000,000	Over \$10,000,000	Over \$50,000,000	Over \$100,000,000	Over \$500,000,000	Over \$1,000,000,000	Other Income (Specify Type & Amount)	Date (Mo, Day, Yr.) One if Honorary
1	Expeditions International Washington Inc - Kris Minority Trust (DC#2)	X															X															
2	Carroll Corporation (DC#2)																X															
3	Carroll Corporation (DC#2)																X															
4	Idexx Laboratories Inc - Kris Minority Trust (DC#2)	X															X															
5	Cognex Corp - Kris Minority Trust (DC#2)	X															X															
6	Lincoln Technology Corp - Kris Minority Trust (DC#2)	X															X															
7	Lincoln Technology Corp - Fund Aggressive Portfolio (DC#1)																X															
8	Lincoln Technology Corp - Fund Aggressive Portfolio (DC#2)																X															
9	DWS Growth & Income Fund (SCDCK)	X															X															
10	Principal Financial Group - IRA	X															X															
11	Principal Financial Group	X															X															

* This category applies only if the asset/income is solely for the filer's spouse or dependent children. If the asset/income is either for the filer or jointly held by the filer with the spouse or dependent children, the filer must list the other higher category.

Print Edition: Cannot be Used.

SCHEDULE A continued
(Use only if needed)

David S. Kris

Page Number

14.01.23

BLOCK A		BLOCK B		BLOCK C		BLOCK D	
Assets and Income		Valuation of Assets at close of reporting period		Income type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.		Amount	
				Type	Amount	Other Income (Specify Type & Amount)	Date (Mo., Day, Yr.) Only if Housing
1	Dodge & Cox Stock Fund (DODGX) - Time Warner 401k	None (or less than \$1,000)	Over \$50,000,000	Dividends	None (or less than \$201)	Over \$5,000,000	
2	Large Cap Equity (Fidelity Managed) - Time Warner 401k		\$25,000,001 - \$50,000,000	Dividends	None (or less than \$201)	Over \$1,000,000	
3	Large Cap Growth (Fidelity Managed) - Time Warner 401k		\$5,000,001 - \$25,000,000	Dividends	None (or less than \$201)	Over \$500,000	
4	S&P 500 Index (Fidelity Managed) - Time Warner 401k		\$1,000,001 - \$500,000	Dividends	None (or less than \$201)	Over \$100,000	
5	Small Cap Index (Fidelity Managed) - Time Warner 401k		\$50,001 - \$100,000	Dividends	None (or less than \$201)	Over \$10,000	
6	International Index (Fidelity Managed) - Time Warner 401k		\$10,001 - \$50,000	Dividends	None (or less than \$201)	Over \$1,000	
7	Bond Index (Fidelity Managed) - Time Warner 401k		\$1,001 - \$10,000	Dividends	None (or less than \$201)	Over \$100	
8	AGN AMRO Income Plus (XXXXXX) - Time Warner 401k			Dividends	None (or less than \$201)	Over \$100	
9	AGN AMRO Income Plus (XXXXXX) - Time Warner 401k			Dividends	None (or less than \$201)	Over \$100	

This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other box(es).

And Other Important Cases

SE 774 (Rev. 10/2002)
5 C.F.R. Part 924
U.S. Office of Government Ethics
Reporting Individual's Name
David S. Kris

SCHEDULE A continued
(Use only if needed)

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BLOCK A Assets and Income		BLOCK B Valuation of Assets at close of reporting period		BLOCK C Income		BLOCK D Other Income	
Line	Description	Type	Amount	Type	Amount	Type	Amount
1	Princo Total Return Fund (PTTRX) - Winner 401k (S)						
2	Louis Seayles Global Bond Fund (LSGLX) - Winner 401k (S)						
3	Vanguard Institutional Index (VINIX) - Winner 401k (S)						
4	CRM Mid Cap Value Fund (CRMVX) - Winner 401k (S)						
5	Columbia Small Cap Core (LSMAX) - Winner 401k (S)						
6	Causeway International Value (CIVIX) - Winner 401k (S)						
7	Columbia Intermediate Bond Z (SETMX) - Baker Botz 401k (S)						
8	Janus Twenty Fund Baker Botz 401k (S)						
9	Hochschild & Miller Large Cap Baker Botz 401k (S)						
<p>* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher category.</p>							

SE728 (Rev. 02/2009)
 SCHEDULE A continued
 U.S. Office of Government Ethics
 Reporting Individual's Name
 David S. Kirs

SCHEDULE A continued
 (Use only if needed)

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Assets and Income BLOCK A	Valuation of Assets at close of reporting period BLOCK B										Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item. BLOCK C									
	None (or less than \$201)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$750,000	\$750,001 - \$1,000,000	Over \$1,000,000	Over \$500,000,000	Over \$1,000,000,000	Over \$5,000,000,000	Other Income Specify Type & Amount	Date (Mo, Day, Yr.) Only if Honorary						
	Type	Amount	Type	Amount	Type	Amount	Type	Amount	Type	Amount	Type	Amount	Type	Amount						
1 NAB GeneSis Trust Fund - Baker Botte 401k (S)																				
2 Baron Small Cap Fund - Baker Botte 401k (S)																				
3 Glenmede Philadelphia International Fund (GTIX) - Baker Botte 401k (S)																				
4 Dreyfus Emerging Markets Fund - Baker Botte 401k (S)																				
5 Rowe Price International Bond - Baker Botte 401k (S)																				
6 Legg Mason Partners Capital & Income Fund Class A (SOPAX) - IRA (S)																				
7 Linear Technology Corp - Kris Minority Trust (DC#1)																				
8 Thomson West - value unascertain- able b/c future royalties unknown																				
9 Brookings Institution																				

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other category.

Prior Editions Cannot be Used.

Page Number

David S. Kris

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[illegible]

Prior Editions Cannot be Used.

SCHEDULE A continued
(Use only if needed)

David S. Kris

Sequence Number

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BLOCK A		BLOCK B		BLOCK C	
Assets and Income	Valuation of Assets at close of reporting period	Type	Amount	Other Income (Specify Type & Amount)	Date (Mo., Day, Yr.) Only if Homestead
1 <input type="checkbox"/> None					
1 Winner Cullen Pickering Hale & Dorr LLP - Defined Benefit Plan (S)					
2 Partial interest in residential vacation home in Chilmart, MA - held in the Krys Realty Trust					
3 Covidien Limited - Joint					
4 PNC interest checking account - owned by David S. Krys Insurance Trust					
5 Professional Life and Casualty Life Insurance (cash value)					
6 Principal Financial Group Life Insurance (cash value)					
7 Reinsurance America Life Insurance (cash value)					
8 John Hancock Life Insurance (cash value)					
9 Savings Bank Life Insurance Co. of Massachusetts (cash value)					
10 <input type="checkbox"/> None					

Prior Editions Cannot be Used.

52 276 (Rev. 12/2009)
 U.S. Office of Presidential Ethics
 Reporting Individual's Name
 David S. Kris

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SCHEDULE B

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded \$1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

Line Item	Classification of Asset	Transaction Type (X)			Date (Mo., Day, Yr.)	Amount of Transaction (\$)												Certificate of Divestiture of
		Purchase	Sale	Exchange		\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over			
1	Example: Central Airlines Common	X			2/1/99													
2																		
3																		
4																		
5																		

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than \$200; and (2) travel-related cash reimbursements received from one source totaling more than \$200. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal, friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel (transportation, lodging, food, etc.), and the nature of expenses provided. Exclude anything given to you by the U.S. Government given to your agency in connection with official travel received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth \$104 or less. See instructions for other exclusions.

Line Item	Source (Name and Address)	Brief Description	Value
1	Example: Nat'l Assn. of Rock Collectors, NY, NY Frank Jones, San Francisco, CA	Airline ticket, hotel room & meals incident to national conference 6/1/99 (personal activity unrelated to duty)	\$500
2			\$500
3			
4			
5			

Print Editions Cannot Be Used.

SF 278 (Rev. 07/2009) 3 C.F.R. Part 251A U.S. Office of Government Ethics	SCHEDULE C	Page Number 22 of 23	
Reporting Individual's Name David S. Kife			

Part I: Liabilities

Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furnishings or appliances; and liabilities owed to certain relatives listed in instructions See instructions for revolving charge accounts.

Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (\$)										
Examples: First District Bank, Washington, DC John Jones, 123 T St., Washington, DC	Mortgage on rental property, Delaware Promissory note	1991 1999	8% 10%	25 yrs. on demand	\$10,001 - \$15,000	\$15,001 - \$25,000	\$25,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	\$1,000,001 - \$2,500,000	\$2,500,001 - \$5,000,000	\$5,000,001 - \$25,000,000	Over \$25,000,000

* This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for continuing participation in an employee benefit plan (e.g. 401K, deferred compensation); (2) continuation payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

No.	Description	Status and Terms of any Agreement or Arrangement	Date
1	401(K) plan - upon resignation, nominee will request lump sum distribution which would rollover to an IRA	Present to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on services performed through Dec.	Due Jones & Smith, Hometown, State 7/03
2			
3			
4			
5			
6			

For Editions Cannot Be Used.

30176 Rev. (03/2000)
 U.S. Office of Government Ethics
 U.S. Office of Government Ethics

Reporting Individual's Name: **David S. Kris**

Page Number: **23 of 23**

SCHEDULE D

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

Examples:	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
1	Time Warner Inc. One Time Warner Center New York, NY Georgetown Law School 37th & O Street, NW Washington, DC	Non-profit educational institution	President	6/92	Present
2	Brookings Institution 1775 Massachusetts Avenue, NW Washington DC	For profit media company	President	7/85	Present
3	Kris Irrevocable Trust dtd 9/7/1996 and Kris Realty Trust dtd 1/18/1992	Private educational institution	Adjunct Professor	6/2003	present
4		Non-profit think tank	Non-resident Senior Fellow	1/2008	present
5		Family trust holding family vacation home	Trustee	2008	present
6				9/1996	present
7					

Part II: Compensation In Excess Of \$5,000 Paid by One Source

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

Examples:	Source (Name and Address)	Brief Description of Duties
1	Time Warner Inc. One Time Warner Center New York, NY	Legal services Senior Vice President, Chief Compliance Officer & Deputy General Counsel
2		
3		
4		
5		
6		

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
GENERAL COUNSEL
WASHINGTON, DC 20511

February 18, 2009

The Honorable Dianne Feinstein
Chairman
Select Committee on Intelligence
United States Senate

The Honorable Christopher S. Bond
Vice Chairman
Select Committee on Intelligence
United States Senate

Dear Chairman Feinstein, Vice Chairman Bond, and Members of the Senate Select Committee on Intelligence:

I write in strong support of the nomination of David Kris for Assistant Attorney General for National Security, Department of Justice.

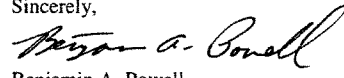
David Kris is well qualified to serve as the next Assistant Attorney General for National Security. He has the strong background in national security law critical to the position. Mr. Kris has a deep knowledge of the issues relevant to the Intelligence Community. He has an extensive background in both national security and criminal law, having served in several positions in the Department of Justice, including as Associate Deputy Attorney General from 2000 to 2003, where he engaged in precedent setting work involving the Foreign Intelligence Surveillance Act (FISA). I became familiar with Mr. Kris during his time in the private sector, where he has distinguished himself as an author and widely respected authority on surveillance and national security law.

I have worked closely with the Department of Justice and the National Security Division while serving as the General Counsel to the first three Directors of National Intelligence, including the current Director, Dennis C. Blair. In my previous capacity as an Associate Counsel to the President and Special Assistant to the President, I worked on issues related to the transformation of the Intelligence Community, including extensive involvement in the drafting and negotiation of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), and supporting the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (Silberman-Robb Commission). Creation of the National Security Division was a key recommendation of the Silberman-Robb Commission. The National Security Division plays a critical role in working with the Intelligence Community to protect the Nation while ensuring the protection of the civil liberties and privacy of all Americans. My

office interacts daily with the National Security Division, as do many elements of the Intelligence Community. In short, the National Security Division has become a key part of the country's national security team. I am confident that the Intelligence Community will benefit from the steady leadership that David Kris is prepared to provide, and that Mr. Kris will continue the progress the Division has made in providing leadership on national security matters critical to the Nation.

I believe David Kris has the talent, background, and leadership ability required to succeed in this important position. He also has a well established reputation in the legal community for integrity and hard work. I urge the Committee to recommend to the full Senate approval of his nomination.

Sincerely,



Benjamin A. Powell



AMERICAN UNIVERSITY

W A S H I N G T O N , D C

DANIEL MARCUS

Phone: 202-274-4214

E-mail: dmarcus@wcl.american.edu

January 30, 2009

Chairman Feinstein
Vice Chairman Bond
Members of the Senate Select Committee on Intelligence
United States Senate
211 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter, and Members of the Committee:

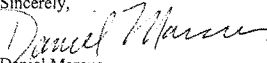
I am writing in support of the President's nomination of **David S. Kris to be Assistant Attorney General for the National Security Division**. I first met Mr. Kris when I served as Associate Attorney General in 2000-2001, and I have been in close contact with him since then because of our mutual involvement in national security issues. (I served as General Counsel of the 9/11 Commission and have taught National Security Law at the Washington College of Law, American University for the last four years.)

I can think of no-one better qualified by experience, intellect, and integrity for this important position at the Department of Justice at this critical time. Mr. Kris is a splendid example of the dedicated career Justice Department lawyer who rose to a key position in the Department - as Associate Deputy Attorney General for national security matters from 2000-2003. In the process, he gained the respect and admiration of the senior leadership of the Department in the Clinton and Bush Administrations, including Attorney General Reno and Deputy Attorney General Holder and Attorney General Ashcroft and Deputy Attorney General Thompson. During this crucial period (including the months following the 9/11 attacks), Mr. Kris worked closely and effectively with the intelligence community (including the CIA, NSA, and FBI), law enforcement agencies, the National Security Council, and the Foreign Intelligence Surveillance Court. And after leaving the Government for the private sector in 2003, he has continued to participate actively in the field, through his writings, teaching, Congressional testimony, and professional conferences. Mr. Kris is widely recognized in the profession and the academy as our leading expert on the Foreign Intelligence Surveillance Act and the recent statutes amending the Act.

I have gotten to know David Kris quite well during the last few years. I can assure the Committee that he has the personal qualities of honesty, integrity, and devotion to the ideals of our nation and our legal system that we look for in public officials. He is intimately familiar with the Department and the intelligence community and has the leadership and advocacy skills that will enable him to deal effectively with the rest of the President's national security team.

I urge you to recommend his confirmation to the full Senate.

Sincerely,


Daniel Marcus

WASHINGTON COLLEGE OF LAW

4801 MASSACHUSETTS AVENUE, NW SUITE 467 WASHINGTON, DC 20016-8181 202-274-4000 FAX: 202-274-4130

Michael Chertoff
1299 Pennsylvania Avenue, NW
Washington, D.C. 20004

January 30, 2009

VIA REGULAR MAIL

United States Senate
Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Feinstein, Vice Chairman Bond and Members:

I am writing to give my strong support to the nomination of David S. Kris to serve as Assistant Attorney General for National Security.

As you know, I was Assistant Attorney General of the Criminal Division from 2001-2003. At that time, my responsibilities included those currently assigned to the National Security Division (which then did not exist). Accordingly, I am very familiar with the nature of the position for which Mr. Kris is being nominated.

During my tenure at the Justice Department, I worked regularly with David as he served in the office of the Deputy Attorney General. Generally, our area of focus involved national security law, policy and legislation.

During my tenure, I observed David to be an outstanding attorney with excellent judgment, strong knowledge of the national security subject matter and a balanced viewpoint. While evenly tempered, David is deeply committed to the Department of Justice in which he served for a decade. He is polite but firm in "doing the right thing." I respect him as a professional and think his background and experience make him ideally suited to lead the National Security Division.

Finally, David's close working experience with the FBI will be a particular asset in the position for which he has been nominated.

I strongly support David's nomination. Please contact me if I can assist you with this matter.

Very truly yours,



Michael Chertoff

McGuireWoods LLP
One James Center
901 East Cary Street
Richmond, VA 23219-4030
Phone: 804 775-1000
Fax: 804 775-1061
www.mcguirewoods.com

Richard Cullen
Direct: 804 775-1000

McGUIREWOODS

February 2, 2009

United States Senate
Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, DC 20510

Re: David S. Kris

Dear Chairman Feinstein, Vice Chairman Bond, and Members of the Senate Select Committee on Intelligence:

I am writing to support the nomination of David Kris to be Assistant Attorney General for National Security.

I am Chairman of McGuireWoods and have worked with David Kris very closely while he was Senior Vice President and Deputy General Counsel of Time Warner Inc. Previously, I served as United States Attorney for the Eastern District of Virginia after being appointed by President George H.W. Bush and as Attorney General of Virginia appointed by Governor George Allen.

David Kris is one of the brightest lawyers with whom I have dealt. But more importantly, he has tremendous judgment, is thoughtful, and possesses the highest integrity. As an American and someone who is more identified with Republican administrations than Democratic ones, I was extremely pleased to learn that David Kris was being nominated for such a vitally important position as Assistant Attorney General for National Security. In our past discussions with him about national security, I have learned that David is pragmatic, thoughtful, respects liberty and security, and is essentially apolitical. From our past experiences I know that he is not afraid to make tough decisions, will never shy from speaking the truth to the Deputy Attorney General, the Attorney General, and to Congress. I have every confidence that the career attorneys and staff at the Department of Justice will be very pleased to work under such a professional as David Kris.

February 2, 2009
Page 2

In summary, I believe that David Kris is the right person for what I believe is one of the most important nominations the President will make. I hope your Committee will recommend that he be confirmed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard Cullen". The signature is fluid and cursive, with the first name "Richard" and last name "Cullen" clearly distinguishable.

Richard Cullen

RC:ngp



PEPSICO

700 Anderson Hill Road Purchase, New York 10577
Tel. (914) 253-3633 Fax (914) 253-3051

LARRY D. THOMPSON
SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS
GENERAL COUNSEL AND SECRETARY

February 4, 2009

Chairman Feinstein, Vice Chairman Bond, and
Members of the Senate Select Committee on Intelligence
United States Senate
Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Feinstein, Vice Chairman Bond, and
Members of the Senate Select Committee on Intelligence

I am writing to strongly support the nomination of David S. Kris to be Assistant Attorney General for National Security. David is uniquely qualified for this important position. His experience in the Department of Justice and with national security issues is deep and extremely relevant to our times.

When I became Deputy Attorney General in May of 2001, I asked David to remain as an Associate Deputy Attorney General and become my chief advisor on FISA and related national security matters. Why did I do so? When I interviewed David, I found in him a professional who was thoughtful and balanced. He had a passion for national security issues but also a deep respect and appreciation for the related civil liberties concerns. David also has experience testifying before Congress on national security issues and clearly understands the role of Congressional oversight in this area.

We are fortunate that a lawyer of David's caliber will once again offer himself for public service.

Sincerely,

A handwritten signature in black ink, appearing to be "L. Thompson", with a long horizontal flourish extending to the right.

February 1, 2009

United States Senate
Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Feinstein, Vice Chairman Bond, and Members of the Senate Select Committee on Intelligence:

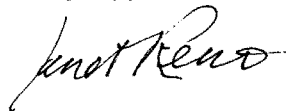
I am writing to support the confirmation of David S. Kris as Assistant Attorney General for National Security. I first met David when he was assigned to work on the prosecution of the Montana Freeman, a domestic terrorist group, in the 1990s. In 2000, he became an Associate Deputy Attorney General, where he worked with me and the Deputy Attorney General, Eric Holder, on intelligence-sharing and other national security matters.

David is a professional, with expertise in both national security and criminal justice. He is a lawyer's lawyer, with a strong analytic mind, but he also has operational experience, having been tempered by the crucible of September 11 and its aftermath.

He appreciates the importance of both liberty and security, and when there is a choice to be made between these competing values, he calibrates that choice in a thoughtful, balanced, and open manner. David is a lawyer who never forgets that his client is the United States, regardless of which political party is in power. He held important leadership positions at DOJ in the Clinton and Bush administrations, and received the Department's highest citation – the Attorney General's Award for Exceptional Service – from me and from John Ashcroft.

David loves the Department of Justice as an institution, and cares deeply about its people, having begun his career in the Honors Program. He has integrity, judgment, and expertise. I believe he would make an excellent Assistant Attorney General for National Security.

Very truly yours,

A handwritten signature in black ink, appearing to read "Janet Reno", with a stylized flourish at the end.

Janet Reno

February 3, 2009

United States Senate
Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Feinstein, Vice Chairman Bond, and Members of the Senate Select Committee on Intelligence:

I am writing to express my strong support for David Kris for the position of Assistant Attorney General for the National Security Division. I worked with Mr. Kris when he was an Associate Deputy Attorney General and can say without hesitation that he is an outstanding selection for this important position and one who will serve with distinction.

Mr. Kris is a brilliant lawyer whose knowledge of national security law is unparalleled. He is also an individual of the utmost integrity and is well respected throughout the Department of Justice and the intelligence community. He is able to balance the needs of the intelligence community and the important civil liberties concerns implicated by actions in this area. He also understands the agencies involved and is well positioned to serve as an honest broker in helping resolve the disputes that inevitably arise between and among them. I cannot imagine a better or more qualified choice for the position. If you or your staff have any questions please do not hesitate to contact me at 202 626-3634.

Respectfully,



Daniel Levin

SSCIB 2009 -0918

ROBERT S. LITT

555 TWELFTH STREET, NW
WASHINGTON, DC 20004-1206

February 3, 2009

United States Senate
Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Feinstein, Vice Chairman Bond, and Members of the
Select Committee:

I believe there has rarely been a better qualified candidate for the position to which he has been nominated than David S. Kris for the position of Assistant Attorney General for the National Security Division. I hope that he will be swiftly confirmed to this position that is so central to protecting our Nation.

I have known David personally and professionally for over ten years. I first met him when he was a young lawyer in the Appellate Section of the Criminal Division, and even in that group of great lawyers, he stood out for his insight, thoughtfulness, balance, and lucidity. As a result, he was frequently relied upon for critical and sensitive matters, and his work was consistently outstanding.

David's three years as Associate Deputy Attorney General, both before and after the awful attacks on September 11, have given him a thorough knowledge of the nature of the dangers we face and of the tools that the Justice Department employs to combat those dangers. It is not an exaggeration to say that there is no one in the country who better understands the Foreign Intelligence Surveillance Act. He has thought and written extensively about these issues, and his work is relied upon by virtually everyone who works in this field. He is widely respected within the Federal Bureau of Investigation and the entire intelligence community, and I believe he is equally respected by Members of Congress and their staff.

Senate Select Committee on Intelligence
February 3, 2009
Page 2

One of the reasons David is so well-regarded is that he is fair and non-partisan. He is neither ideological nor political; he served in the Deputy Attorney General's office with distinction in both the Clinton and Bush Administrations. He appreciates the importance both of strong intelligence capabilities, and of privacy and civil liberties, and of the need to balance them. He is a person of complete integrity who believes strongly in the Department as an institution. Perhaps most importantly today, he understands that all activities of the Government must be governed by the rule of law.

By virtue of David's ability, knowledge, judgment, and experience, I firmly believe that our Nation would be exceptionally well served were he confirmed as Assistant Attorney General. I urge his confirmation.

Very truly yours,

A handwritten signature in dark ink, consisting of several stylized, overlapping loops and a final upward stroke, representing the name Robert S. Litt.

Robert S. Litt

